HB 1704-FN - AS INTRODUCED

2024 SESSION

24-2580
08/10

HOUSE BILL ***1704-FN***

AN ACT relative to the reconciliation of ballots act.

SPONSORS: Rep. McCarter, Belk. 8; Rep. Gerhard, Merr. 25; Rep. Terry, Belk. 7

COMMITTEE: Election Law

ANALYSIS

This bill requires the reconciliation of ballots before and after an election. This bill also details penalties for violating election laws, especially dereliction of duties.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to the reconciliation of ballots act.

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

1 New Chapter; Ballot Reconciliation. Amend RSA by inserting after chapter 652 the following new chapter:

CHAPTER 652-A

BALLOT RECONCILIATION

652-A:1 Title. This chapter may be known and cited as the Ballots Reconciliation Act.

652-A:2 Definitions. In this chapter:

I. “Ballot” means a process of voting, in writing and typically in secret.

II. “Municipality” means a city or town that has corporate status and local government.

III. “State election official” means the secretary of state, the ballot law commission, a town or city clerk, the state or local political party executive committee or executive committee member, a moderator, or any employee.

IV. “Polling location” means a building where voting takes place during an election, typically one that normally has another function, such as a school.

V. “Eligible voter” means a person who meets the requirements set forth in a political subdivision for being able to vote.

VI. "Ballot storage" means any around the clock, electronically monitored and surveilled, secured and locked facility as deemed by the local government, and is to be kept within the city, town or municipality where an election has been held.

VII. "Ballot lot" means an allotted number of ballots derived from the secretary of state, numbering at either a singular 2,500 total ballots per smaller voter polling location, or, for a larger voting population, a single lot of 5,000 ballots (which shall be the high limit per poll location) per polling location, which for each size, shall be known in order as a small or large ballot lot. If a small lot will not cover the number of expected voters at any polling place, a large lot shall be placed there.

VIII. "Breach of election law" means an act of noncompliance with the laws governing elections held in New Hampshire before, during or after an election committed by an election official.

IX. "Dereliction of duties" means a willful failure to perform the duties and obligations of any election official's office.

652-A:3 Ballots Reconciliation

I. All ballots shall be hand counted.

II. All ballots shall be serial-numbered.

III. All ballots shall have a dated, and matching, serial numbered perforated tab, the perforated serial number tab matching the ballot serial number, and including the poll location number, to be retained by and for the voter's receipt of the voter's casted ballot.

IV. Serial numbers from ballots shall be redeemable by the voter holding his or her serial number where such ballots are stored for a copy or copies of the voter's ballot for 60 months at the cost of $1 dollar per copy.

V. All ballots, including absentee ballots, shall be reconciled by the town or ward moderator pre-election, during the hand count, and be held in the same fashion during post-election, until the ballot lot retention time has expired.

VI. Town or ward clerks shall not print or copy serial-numbered ballots. Only the secretary of state may provide perforated, serial numbered ballots for all eligible voters of each municipality.

VII. The secretary of the state shall track all serial-numbered absentee ballots, and paper ballots, both before the election and after the election, and publicly publish his or her findings once a year in non-voting years.

VIII. The town or ward moderator or clerk shall complete a chain of custody log for all ballots before the election and after the election. Such log shall require a dual signature signoff to be kept with the ballots for the required retention period.

IX. All election day signoff signatures shall not be redacted for any reason.

X. Any unused or voided ballots of each printed, serial numbered and designated lot shall be properly labeled and kept with all other ballots of the same printed, serial numbered and designated lot.

XI. All ballots shall be stored in a 24-hour, continuously electronically surveilled, secured, and locked, ballot storage area, accessed by only authorized election officials, or by registered voters accompanied by such authorized officials. Such place may be the state archives, so long as it meets the above conditions. The ballots and any other election records shall be retained for a period of 60 months and shall be accessible to registered voters requesting an appointment. Such access shall be granted within a week of the request. An election official shall accompany any voter requesting access.

XII. When the poll is closed, ballot counting shall begin, and end only when completely finished, and with immediacy be declared, in the most precise, but speedy manner possible.

XIII. All original ballots of each printed, serial numbered and designated lot shall be retained with its printed lot, in whole, pre-election / post-election, and no original copy shall be separated or removed from the room or vault holding its' printed, serial numbered, and designated lot after counting and being stored, nor shall any original copy be removed from the ballot storage area, room or vault unless publicly memorialized and printed, first by the local government, and then by the secretary of state, during the 60 month retention period.

XIV. Any movement of prior stored election ballot lots, documentation or pertaining materials to a new ballot storage facility shall be publicly noticed and signed by the town or ward clerk and the secretary of state.

XV. Any original ballots of each printed, serial numbered and designated lot needed in the event of a request for a recount shall be done by copying original ballots and other retained election documentation. No originals shall be removed from said ballot storage room, vault or ballot storage facility in the event of a request for a recount until the 60-month retention date has expired.

XVI. All moderators and clerks shall attend an annual specific training held by the secretary of state to ensure complete compliance with the statewide election process laws and procedures in regard to ballot reconciliation.

XVII. All polling locations shall be limited to 5,000 eligible voters.

XVIII. Poll workers shall be eligible voters. Poll workers shall be chosen at random from a list of volunteers.

XIX. At least 2 municipalities from each county, chosen at random by the secretary of state shall be audited after each election. The audit shall be conducted by eligible voters.

652-A:4 Mandatory Reporting. Any election official that has knowledge of a failure to comply with the provisions of this chapter shall immediately report the failure to a law enforcement agency. Any election official who is found to have committed perjury in addition to violating the provisions of this chapter or any other election law, shall be subject to the penalties under RSA 652-A:5, RSA 652-A:6,and RSA 652-A:7.

652-A:5 Criminal Penalties Resulting From Audit. If after an audit an election official is found guilty of violating election law, such official shall immediately be suspended without pay, and removed from office, and appropriate penalties for each count.

652-A:6 Dereliction of Duties; Penalty. Any election official guilty of dereliction of duty shall be guilty of a class A felony and immediately be suspended without pay and removed from office.

652-A:7 Guilty Individuals Barred. Any election official found guilty of dereliction of duty or otherwise willfully violating any election law shall be barred for life from holding any elected government position, any appointed governmental position, or from employment by the state of New Hampshire. Such person shall also lose his or her right to vote for 4 years or upon special petition by the attorney general to the supreme court.

652-A:8 Responsibility and Liabilities: Any election official allowing access to ballots shall be liable for any distortion of, or removal of, or false document or false ballot replacement, or loss or damage while showing, or for any separation of each original printed, designated ballot from its ballot lot, and not be replaced to its original position while under their supervision. If such removal, replacement, loss damage, or separation was willful, the election official shall be subject to the provisions of RSA 652-A:5 through RSA 652-A:7.

652-A:9 Recording, Copies and Photographs. Election officials bearing access to ballot lots shall exercise and allow detailed transparency, and shall (use, and, or provide an updated, maintained and operable scanner, copier and ink,) and make any scanned copies as requested, for any registered voter or viewer, (the registered voter or viewer shall provide the paper,) and, or, the registered voter or viewer shall be allowed to photograph any ballots or documentation held therein, during their visit. Any visit shall be limited to 4 hours per appointment, but the registered voters shall not be denied such appointments or any future appointments, for un-due reasons.

2 Polling Places. Amend RSA 658:9, I to read as follows:

I. The selectmen of each town and ward shall provide for a suitable place in which to hold state elections and shall see that the same is warmed, lighted, and furnished with proper supplies and conveniences. ***There shall be such a suitable place for every 5,000 eligible voters in the town or ward.*** Such supplies and conveniences shall include a ballot box and a sufficient number of pens with machine-readable ink or soft black lead pencils and booths with shelves to enable the voter to mark his or her ballot screened from all observation as to the manner in which he or she does so. Each place in which state elections are held shall be easily accessible as provided in RSA 658:9-a to all persons including persons with disabilities and elderly persons who are otherwise qualified to vote in the choice of any officer or officers to be elected or upon any question submitted at such election. The selectmen of each town and ward shall be charged with the responsibility to see that the flag of the United States is displayed inside and, weather conditions permitting, flown outside the polling place on election day. A guardrail shall be so constructed and placed so that only such persons as are inside such rail can approach within 6 feet of the ballot box and of the voting booths. The arrangements shall be such that the voting booths can be reached only by passing within the guardrail.

3 Defective ballots. Amend RSA 659:55, I(a) to read as follows:

(a) The ballot does not have printed upon it the official endorsement in accordance with RSA 656:17 [~~, unless it has been prepared in accordance with RSA 658:35~~].

4 Repeal. The following are repealed:

I. RSA 658:21, relative to pasters and substitute candidates.

II. RSA 658:34, relative to pasters on ballots.

III. RSA 658:35, relative to unofficial ballots.

IV. RSA 659:24, relative to unofficial ballots.

5 Effective Date.

I. RSA 652-A:5-7 shall take effect January 1, 2025.

II. The remainder shall take effect upon its passage.

LBA
24-2580
12/10/23

HB 1704-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the reconciliation of ballots act.

FISCAL IMPACT: [X] State [X] County [X] Local [ ] None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	**FY 2025**	**FY 2026**	**FY 2027**
Revenue	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Revenue Fund(s)	General Fund			
Expenditures	$0	Indeterminable Increase $1,000,000+	Indeterminable Increase $1,000,000+	Indeterminable Increase $1,000,000+
Funding Source(s)	General Fund			
Appropriations	$0	$0	$0	$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? [X] No
- Does this bill authorize new positions to implement this bill? [X] No

Estimated Political Subdivision Impact - Increase / (Decrease)				
	FY 2024	**FY 2025**	**FY 2026**	**FY 2027**
County Revenue	$0	$0	$0	$0
County Expenditures	$0	Indeterminable		
Local Revenue	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Local Expenditures	$0	Significant Indeterminable Increase	Significant Indeterminable Increase	Significant Indeterminable Increase

METHODOLOGY:

This bill overhauls the ballot process making significant changes to the Secretary of States responsibilities as well as town and cities responsibilities.

The Department of State notes this bill makes substantial changes, resulting in an indeterminable expenditure increase of over $1,000,000 in State general funds starting in fiscal year 2025 and forward. The bill introduces large modifications to election procedures, particularly concerning ballots, access, and related processes, making it challenging to determine the fiscal impacts. Implementing these changes might demand additional positions.

Additionally, the emphasis on increased audits and a broader range of ballots is expected to increase expenditures.

The New Hampshire Municipal Association states this bill proposes a comprehensive overhaul of the existing election procedures related to ballots, their access, and election processes, including, but not limited to:

- Mandating one polling place for every 5,000 eligible voters, with locations restricted to 5,000 voters to address disparities in current practices where some municipalities have a single polling place for a significantly larger number of eligible voters.
- Requiring all ballots to be stored in a 24-hour, continuously electronically surveilled, secured, and locked ballot storage area, accessible only to authorized election officials or registered voters accompanied by such officials. This is a departure from the current absence of mandatory surveillance in many municipalities.
- Specifying original ballots from each printed, serial-numbered, and designated lot must be retained separately, both pre-election and post-election, to prevent mixing. For instance, if a new box of ballots is opened during an election, officials must segregate ballots currently in use from those about to be used to prevent mixing.
- Introducing serial numbers on ballots, allowing voters to redeem their serial numbers to obtain a copy of their cast ballot for a fee of $1 per copy for a period of 60 months.
- Holding election officials liable for any distortion, removal, false document replacement, or damage to ballots while showing them, or any separation of each original printed, designated ballot from its lot. However, officials must still grant access to ballots upon request.

The New Hampshire Municipal Association asserts that calculating the costs associated with this proposed legislation is challenging due to several factors:

- Determining the minimum number of required polling locations is complex as locations are assigned by town and ward, and population estimates are subject to change. Municipalities may need to set up additional polling locations to avoid potential violations, resulting in unpredictable costs.
- The cost of implementing 24/7 video surveillance for ballots, considering the varying parameters of their location and time, is uncertain. Municipalities lacking such surveillance would need to install it to comply with the 60-month review period.
- Increased time spent by election officials sorting ballots, due to the mixing of ballots from different lots during voting and counting, will result in additional, undetermined costs associated with processing elections.

- There may be additional costs related to increased stipends and pay for election officials, who might be dissuaded from taking up election roles due to heightened liability associated with actions by third-party actors that officials could not reasonably prevent.

This bill adds, deletes, or modifies a criminal penalty, or changes statute to which there is a penalty for violation. Therefore, this bill may have an impact on the judicial and correctional systems, which could affect prosecution, incarceration, probation, and parole costs, for the state, as well as county and local governments. A summary of such costs can be found at: https://gencourt.state.nh.us/lba/Budget/Fiscal_Notes/JudicialCorrectionalCosts.pdf

AGENCIES CONTACTED:

Department of State, New Hampshire Municipal Association, Judicial Branch, Judicial Council, Department of Justice, Department of Corrections, and New Hampshire Association of Counties