HB 1473-FN - AS INTRODUCED

2022 SESSION

22-2638
11/04

HOUSE BILL ***1473-FN***

AN ACT authorizing a forensic audit of the November 3, 2020 election results in Merrimack county for president, governor, and United States senate races.

SPONSORS: Rep. Abrami, Rock. 19; Rep. Aron, Sull. 7; Rep. Abramson, Rock. 37; Rep. Homola, Hills. 27; Rep. Lanzara, Hills. 28; Rep. Ankarberg, Straf. 10

COMMITTEE: Election Law

ANALYSIS

This bill requires a third party forensic audit of the November 3, 2020 election results for president, governor, and senate races in Merrimack county.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT authorizing a forensic audit of the November 3, 2020 election results in Merrimack county for president, governor, and United States senate races.

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

1 Purpose and Scope. Notwithstanding any provisions of law to the contrary, this act authorizes and directs a full forensic audit of the November 3, 2020 election for United States President, governor and United States senate races of Merrimack county by a third party audit company. The purpose of the audit is to increase voter confidence in the election process by identifying any areas of exposure that may require stronger business controls, practices, and tools. As such, the hands-on audit activity shall exclude the participation of current personnel or prior experts that participated in the election process or previous audits in New Hampshire.

The audit shall include ballot counting, ballot machines, their memory cards and software, the hand tabulations of ballots, the authenticity of ballots including the inspection of the ballots themselves, all ballot content, ballot paper, delivery tools and vehicles such as envelopes, boxes, folding machines, as necessary, same day registrant residency confirmation, statistical sampling and validation of voters who cast ballots and any steps the audit company may deem necessary to validate the audit results. Should the results of the forensic audit yield a deviation in the official election results for any candidate of 500 votes, the audit shall expand immediately to a full statewide audit to determine the breath and scope of the election issues across the state of New Hampshire.

2 Forensic Election Audit Team. A forensic election audit team shall be formed to manage the third party audit described in section 3. It shall be comprised of one person designated by each town to be audited, one person designated by the New Hampshire house of representatives, one person designated by the New Hampshire senate, and a third party who shall act as technical lead. The technical lead shall be hired by the forensic election audit team. This individual shall possess the skills to challenge any area of finding by the third party audit company. This technical lead may access technical consultants to augment areas of specialty. The technical lead shall provide consulting to the forensic election audit team as needed and assure the third party company stays within expected boundaries. The forensic election audit team shall hold the technical expert accountable for the execution of their function. The forensic election audit team with all its members shall be responsible for bringing recommended third party audit companies to the executive committee for selection.

3 Audit Process.

I. The audit process shall be determined by a professional third party audit company recommended by the forensic election audit team. The forensic election audit team shall make its

recommendations the executive committee, who shall select the third party company on a majority vote. The audit shall be executed by the selected third party who shall manage the audit in its full scope of work consistent with the recent Arizona Maricopa county audit. This audit action shall not be infringed by any other law.

II. The audit shall occur at a location designated by the forensic election audit team and provide the public complete transparency of the audit activity. The public shall be able to observe the audit including the movement of ballots and machines with 24 hour live video streaming of the audit in process. Volunteers used by the third party to count ballots shall allow for bipartisan participation and review. The facility shall be staffed with guards, strong security measures and keep logs of all entry and exit.

III. The towns and cities located within Merrimack county shall be responsible for transport of the ballot counting devices used in the general election on November 3, 2020 to the audit location and for the return of the devices to their point of origin upon completion of the audit. The secretary of state and towns in possession of the ballots shall be responsible for the transport of the ballots to the audit location and for the return of the ballots to their storage site. LHS Associates, or any other party in possession of the ballot machine memory cards, shall be responsible for the transport of ballot machine memory cards containing the data from the November 3, 2020 election to and from the audit location. In all cases, chain of custody shall be documented and be the responsibility of the party currently in possession of the audit item. The secretary of state and attorney general shall also be responsible for arranging the security at the location where the audit occurs.

IV. The secretary of state, attorney general, LHS Associates, and the towns and cities located within Merrimack county shall provide the election audit team whatever information or documentation the auditors require to perform the audit.

4 Third Party Forensic Election Audit Report Required. Within 45 days of the conclusion of the audit, the third party forensic election audit team shall produce a report with the results provided by the third party audit company which shall include, but not be limited to, a finding as to whether the ballot counting machines, software and memory cards accurately counted the ballots across the presidential, governor and senate races. They shall identify if nonresident and/or non-citizen votes were counted. The third party auditor shall make recommendations as to what improvements to the machine processing and tabulation processes might be considered in the future as well as all other facets covered in the full scope of work. The report as well as the third party audit results shall be provided to the secretary of state, the towns and cities located within Merrimack county and the ballot law commission. The reports shall be made available to the public within 3 days of completion.

5 Report Required; Secretary of State and Attorney General. Within 45 days of receipt of the forensic election audit team's report required pursuant to section 4, the attorney general and secretary of state shall issue a report to the speaker of the house of representatives, president of the

senate, and the select boards of the towns of Merrimack county as to results of the audit and any resulting recommendations.

6 Report Required; Ballot Law Commission. Within 45 days after receipt of the forensic election audit team's report the ballot law commission shall, in accordance with RSA 656:41, issue a report as to the performance of any surrounding processes that impact an accurate count.

7 Authority to Unseal Ballot Boxes. The third party audit company shall have the authority to unseal the ballot boxes to commence the audit work. The ballots shall be boxed and sealed after the audit in accordance with the procedures of RSA 659:95 and returned to the secretary of state.

8 Affirmation of Ballot Law Commission Ruling. The results of the audit shall not alter the official results of the Merrimack county races as determined by the ruling of the ballot law commission on November 25, 2020.

9 Deadline. The forensic election audit shall be completed within 3 months of the effective date of this act.

10 Election Audit Fund; Appropriation.

I. There is established in the state treasury an election audit fund which shall be administered by the secretary of state. Any gifts, grants, and donations, including monetary contributions from non-governmental sources, shall be credited to the fund to defray the costs of the election audit required in this and any other election audits.

II. The secretary of state shall accept any gifts, grants, or donations to be credited to the fund and shall approve all requests for disbursement from the fund.

III. The sum of $150,000 for the fiscal year ending June 30, 2023 is hereby appropriated to the fund for the purposes of sections 1-9 of this act. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

11 Repeal. Sections 1-10 of this act are hereby repealed.

12 Effective Date.

I. Section 11 of this act shall take effect June 30, 2023.

II. The remainder of this act shall take effect July 1, 2022.

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HB 1473-FN- FISCAL NOTE
AS INTRODUCED

AN ACT authorizing a forensic audit of the November 3, 2020 election results in Merrimack county for president, governor, and United States senate races.

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

	Estimated Increase / (Decrease)			
STATE:	**FY 2022**	**FY 2023**	**FY 2024**	**FY 2025**
Appropriation	$0	$150,000	$0	$0
Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	[X] General	[ ] Education	[ ] Highway	[ ] Other

LOCAL:

Revenue	$0	$0	$0	$0
Expenditures	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill requires a forensic audit of the 2020 election in Merrimack County for Untied States president, NH governor, and US state senators. It also establishes an election audit fund, which shall be administered by the Secretary of State, to cover the cost of the audit. The election audit fund shall be funded with any gifts, grants and donation including monetary contributions from non-governmental sources as well as an appropriation of $150,000 for the fiscal year ending June 30, 2023.

The Department of State indicates there would be a substantial indeterminable increase in general fund expenditures. The increase will be offset by any funds accepted from outside of state government. However, the Department of State is unable to determine how much revenue will be collected through voluntary, non-governmental contributions.

The New Hampshire Municipal Association states there will be an indeterminable increase in expenditures to cover costs of fuel and any other transportation costs. The NH Municipal Association assumes the funds from the election audit fund would be used to pay any costs incurred by municipalities.

The Department of Justice states the Attorney General would be obligated to issue a joint report with the Secretary of State on the audit results and recommendations. The fiscal impact is indeterminable, though there would be a significant demand on Attorney General staff. Also, staff would be participating in the collection or opening of ballot boxes and associated material from each town in Merrimack County. The more readily determinable obligations would probably result in 150-200 staff hours, not including being present for audit proceedings. However, the amount of time that staff would spend gathering materials as requested by auditors is unknown resulting in an indeterminable increase in state expenditures.

AGENCIES CONTACTED:

Department of State, Department of Justice and New Hampshire Municipal Association