CHAPTER 4
HB 154 - FINAL VERSION

01/03/2024 2403s
22Feb2024... 0845EBA

2024 SESSION

23-0554
02/05

HOUSE BILL ***154***

AN ACT relative to electronic ballot counting devices.

SPONSORS: Rep. Harvey-Bolia, Belk. 3; Rep. Aron, Sull. 4; Rep. Post, Hills. 42; Rep. Pauer, Hills. 36

COMMITTEE: Municipal and County Government

AMENDED ANALYSIS

This bill makes various changes to the election statutes to incorporate the selection of new electronic vote counting devices.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 4
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to electronic ballot counting devices.

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

4:1 Absent Uniformed Services Voters; Space Force Included. Amend RSA 652:16-c, I to read as follows:

I. Members of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, ***Space Force,*** and National Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service, and all regular and reserve components thereof, while in active service.

4:2 Write-In Blanks; Electronic Ballot Counting Devices. Amend RSA 656:12 to read as follows:

656:12 Write-In Blanks. At the end of the list of candidates for each office, there shall be left as many blank lines as there are offices to be filled which a voter may use to write in the name of any person for whom the voter desires to vote. ***In cities and towns where an electronic ballot counting device is used for the counting of ballots, as provided in RSA 656:40, there shall be a square, box, oval, or other appropriate symbol for directing the voters where to make the appropriate mark directly to the right of each blank line.***

4:3 Questions on the Ballot. Amend RSA 656:13 to read as follows:

656:13 Questions on the Ballot. Except as provided in RSA 656:14, whenever a question is submitted to voters at a state general election as provided in RSA 663, the question shall be printed on the state general election ballot following the offices columns. Printed after the question there shall be 2 squares***, boxes*** [~~or~~] ovals, ***or other appropriate symbol,*** one with the word "yes" beside it and another with the word "no" beside it.

4:4 Paper. Amend RSA 656:15 to read as follows:

656:15 Paper. The state general election ballot shall be printed on plain white paper in weight not less than that of ordinary printing paper. A constitutional question submitted on a separate ballot shall be printed on colored paper***, or on plain white paper with a printed, colored header***.

4:5 Color; Party Designation; Hand-Count Polling. Amend RSA 656:25 to read as follows:

656:25 Color; Party Designation. The state primary election ballots of all parties shall be printed upon colored paper ***or on plain white paper with a printed, colored header***, but no ballots of any political party shall be printed upon paper ***or printed with a printed, colored header,*** of the same or a closely similar color as the ballots of another political party. On the back of each ballot ***to be used in hand-count polling places*** shall be printed in prominent type the name of the party.

4:6 Form; Electronic Ballot Counting Device. Amend RSA 656:31 to read as follows:

656:31 Form. On the presidential primary election ballot of each political party, there shall be one column for the office of president. The column shall be headed "Candidate of the (insert name of party) Party for President of the United States." Underneath this heading there shall appear the words: "I

hereby declare my preference for candidate for the office of President of the United States to be as follows." Below these words, there shall be printed [~~"(VOTE FOR NOT MORE THAN ONE)"~~] ***"Vote for not more than 1"*** followed by the name, town or city, and state of each candidate with ***a square,*** [~~boxes~~] ***box, oval, or other appropriate symbol*** directly to the right. There shall always be one blank space on the ballot below the candidates' names to allow for writing in the name of a candidate. ***In cities and towns where an electronic ballot counting device is used for the counting of ballots, as provided in RSA 656:40, there shall be a square, box, oval, or other appropriate symbol for directing the voters where to make the appropriate mark directly to the right of the blank space.***

4:7 Adoption; Approval by Ballot Law Commission. Amend RSA 656:40 to read as follows:

656:40 Adoption. The mayor and aldermen of any city or the selectmen of any town, subject to the approval of the ballot law commission, may authorize the use of one [~~or more~~] ***of the*** electronic ballot counting [~~devices~~] ***devices approved by the ballot law commission and the number of those devices used*** for the counting of ballots in such city or town [~~on a trial basis~~] for any regular or special election [~~and pay the expense of such trial from any available funds~~]. The use of such [~~devices~~] ***device*** so authorized shall be valid for all purposes. Any town, or the mayor and aldermen of any city, may vote to lease or purchase electronic ballot counting devices ***approved by the ballot law commission*** for the elections held in said town or city. Any town, or the mayor and aldermen of any city, so acting shall notify the secretary of state of the action taken in regard to electronic ballot counting devices; and, after said action, electronic ballot counting devices shall be used in said town or city in accordance with said vote or authorization. If a special state election involving a state representative district occurs in a city or town that has adopted the provisions of RSA 656:40, the secretary of state may prepare and issue paper ballots which shall be used.

4:8 Approval by Ballot Law Commission. Amend RSA 656:41 to read as follows:

656:41 Approval by Ballot Law Commission. The ballot law commission shall act as a board to examine devices for the electronic counting of ballots. The commission shall, whenever requested, examine any device which may be capable of meeting the requirements for elections held in this state and shall, at least every 5 years, review current and new devices to determine whether the devices require upgrading. The commission, after such review, shall file an explanatory report with the secretary of state within 30 days of its determination that outlines the basis for its determination, taking into account such factors as hardware and software standards, policies and procedures, security requirements, and usability. The commission shall approve a device upon request in its discretion, and no device shall be used in any election in this state unless it reads the voter's choice on a paper ballot and is of a type so approved by the ballot law commission. Any device that is altered must be re-approved ***by the ballot law commission*** before it is used in any election in this state ***in accordance with procedures set by the ballot law commission***. For the purposes of this section, a device shall be considered altered if any mechanical or electronic part, hardware, software, or programming has been altered.

4:9 Rules; Electronic Ballot Counting Devices. Amend RSA 656:42, VIII to read as follows:

VIII.(a) Before each election, the vendor for any electronic ballot counting device shall provide the secretary of state with an exact electronic record of the data written to each memory card to be used in the election.

(b) The town or city clerk shall preserve each memory device used at each election until after the recounts for such election are complete and any and all legal challenges to the outcome of that election are adjudicated.

(c) The town or city clerk shall securely preserve each memory device used in any election as directed by the secretary of state.

(d)(1) To help ensure that the counting device cannot be tampered with or improperly accessed, the town or city clerk shall employ electronic ballot counting device seals ***and seal the electronic ballot counting device in all places specified by the secretary of state in the election procedure manual published pursuant to RSA 652:22.*** [~~specified by the secretary of state and seal the electronic ballot counting device in the following areas:~~

~~(A) The connection of the zippers on the closed canvas cover of the counting device carrying bag, case, or the device base for devices stored in their bases.~~

~~(B) The memory device.~~

~~(C) Electronic ballot counting device housing and all ports or access points to the device hardware or software, such that the seal(s) would be broken if the device is accessed.~~]

(2) The town or city clerk shall update an activity log supplied by the secretary of state to keep a record each time a counting device seal is broken and a new one installed, and the reason for which the seal was broken.

(3) No person shall break a counting device seal without the presence of 2 witnesses. Upon breaking such seal, the person responsible shall update the activity log, obtain the signatures of each witness, record the reason for breaking such seal, ensure that it is resealed with a new seal immediately, and properly record the new seal number in the activity log.

(4) Before the moderator places into service a counting device on election day, the moderator ***and clerk*** shall ***certify on the pre-election certificate required by RSA 658:32*** [~~verify~~] all counting device seals have been maintained intact, and any seals which have been broken ***in accordance with this section*** have been [~~promptly~~] ***appropriately*** resealed and the activity log properly recorded and signed.

(5) If, on election day, the moderator notices that any seal on the counting device appears tampered with or broken without an adequate record in the activity log, the moderator shall refrain from using the counting device in that election, and shall report the apparent tampering to the attorney general, the secretary of state, the town or city clerk, and the selectmen.

(6) The counting device and the activity log shall be subject to review by the attorney general or secretary of state at any time.

(7) Whenever the town or city clerk receives a memory device from the vendor, the clerk shall break the memory device seal, insert the memory device in the electronic ballot counting device, and apply a new seal. The clerk shall lock any programmed memory device not inserted into an electronic ballot counting device in a safe and record the names of individuals that have access to such safe on the activity log.

(8) Whenever the town or city clerk removes the memory device from the electronic ballot counting device, the clerk shall immediately return it to the memory card programmer or, if programmed locally, secure the device in a safe and reseal the empty memory device slot or port.

(e)(1) The town or city clerk shall give public notice of the date and time of a pre-election test of the electronic ballot counting device and ballots.

(2) Upon receipt of the official ballots from the secretary of state, the town or city clerk shall remove the number of ballots needed to test the electronic ballot counting device from among the official ballots and keep them separate and secure from the remaining official ballots thereafter.

(3) The town or city clerk shall mark any ballots used for testing with the words "TEST."

(4) The town or city clerk shall mark the test ballots in such a way as to demonstrate a vote for each candidate on at least one test ballot, as well as votes for less than and more than the number of candidates that may be voted for an office, write-ins, multiple votes for a candidate who appears in more than one party column for the same office on a general election ballot, and ballots on which there are no votes. The clerk shall mark as many as possible of the combinations of choices that a voter may indicate on the ballot.

(5) The town or city clerk shall run each of the test ballots through the counting device in the following orientations: Top first with side one face up, bottom first with side one face up, top first with side one face down, and bottom first with side one face down.

(6) The town or city clerk shall count the votes marked on the test ballots run though the electronic ballot counting device and multiply the results by 4 to account for the 4 different orientations, and check these results against the tally from the electronic ballot counting device.

(7) If the electronic ballot counting device's tally does not match the count of the town or city clerk, the clerk shall notify the moderator, who shall order that the electronic ballot counting device not be used at the election.

(8) The pre-election test shall be completed no later than the Wednesday immediately prior to the election.

(9) The town or city clerk shall document the pre-election test by preserving:

(A) The test ballots.

(B) The count of votes on the test ballots made by the town or city clerk.

(C) The results from the electronic ballot counting device that was tested.

(10) The clerk shall test all electronic ballot counting devices and memory devices in the possession of the town or city.

(11) Prior to placing the electronic ballot counting device or any memory device into service in an election, the moderator *and the clerk* shall certify *on the pre-election certificate required by RSA 658:32* that there is evidence that pre-election testing was conducted on each electronic ballot counting device and each memory device in the town or city clerk's possession, and that these ballot counting devices and memory devices have passed the test. *The moderator and clerk shall also certify on the pre-election certificate required by RSA 658:32 that all electronic ballot counting device seals are*

present, all seals have been maintained intact, and that any seals which have been broken in accordance with this section have been appropriately resealed and the activity log properly recorded and signed.

4:10 Arrangement. Amend RSA 658:9, IV-V to read as follows:

IV. In addition to the voting booths described in paragraphs II and III, each polling place shall have table-top voting *privacy* screens available for use in an election. Each voting *privacy* screen shall consist of 3 panels, to be positioned on a table or similar surface so that when a voter is marking a ballot he or she is provided privacy. Each panel of the *privacy* screen shall be at least 17 inches high and 15 inches wide.

V.(a) Each polling place shall have available for use in an election at least 2 of the voting booths described in paragraph II, one of the voting booths described in paragraph III, and 2 of the voting *privacy* screens described in paragraph IV.

(b) The minimum number of voting booths and *privacy* screens that shall be erected for an election shall be as follows:

(1) For a general election where votes will be cast for president, one for every 100 voters on the checklist. This requirement may be modified with the approval of the secretary of state and the attorney general for specific polling places, if conditions within the polling place will not permit the required number of voting booths. Under no circumstances shall the required number of voting booths drop below one booth for every 125 voters for a general election where votes will be cast for president.

(2) For a general election where votes will not be cast for president, one for every 125 voters on the checklist.

(3) For all other state elections, including the state primary election, one for every 150 voters on the checklist.

(4) For all city, town, school district, and village district elections, one for every 200 voters on the checklist.

(c) The minimum requirements established in subparagraph (b) may be satisfied with any combination of booths or *privacy* screens, provided that no more than 50 percent of the minimum requirement is satisfied by voting *privacy* screens and that the requirements of subparagraph (a) are also met. The moderator may require that booths or *privacy* screens exceeding the minimum number be erected or available at the polling place. [~~This section shall not be interpreted to mandate the erection of voting screens if there are sufficient booths to satisfy the requirements of subparagraph V(b).~~]

4:11 Pre-Election Certificate. Amend RSA 658:32 to read as follows:

658:32 [~~Moderator's~~] *Pre-Election* Certificate. The secretary of state shall prepare and distribute to each town or ward clerk [~~2~~] *3* copies of the [~~moderator's~~] *pre-election* certificate. When the ballots are counted, the moderator *and clerk* shall certify thereon the total number of ballots received. One copy shall be retained by the moderator for his or her records; *one copy shall be retained by the clerk for his or her records, and one copy* [~~the other~~] shall be [~~certified~~] *forwarded* by the clerk [~~and forwarded~~] to the secretary of state with the election returns pursuant to RSA 659:75.

4:12 Voter Proceeds to Booth; Privacy Screens. Amend RSA 659:15 to read as follows:

659:15 Voter Proceeds to Booth. On receipt of his ***or her*** ballot, the voter shall forthwith without leaving the space enclosed by the guardrail proceed to one of the voting booths ***or voting privacy screens*** and shall mark his ***or her*** ballot.

4:13 Number of Voters Allowed Within Guardrail; Voting Privacy Screens. Amend RSA 659:16 to read as follows:

659:16 Number of Voters Allowed Within Guardrail. The number of voters within the guardrail at any one time shall not exceed the number of voting booths ***and voting privacy screens*** at the polling place, provided that the number of voters shall not include election officers or any voter who is engaged in the act of handing his ***or her*** ballot to the moderator.

4:14 Marking the Ballot; Instructions to Voters. Amend RSA 659:17 to read as follows:

659:17 Marking the Ballot; Instructions to Voters. The secretary of state shall provide on the top of the general election ballot the following voting instructions. The secretary of state is authorized to replace the phrase "Make the appropriate mark" with an appropriate description and example of the mark to be made for the type of ballot in use, such as "Make a cross (X) in the box[~~,~~]" ***or*** "Completely fill in the oval[~~,~~]"[~~ or "Complete the arrow"~~]:

1) To Vote

Make the appropriate mark to the right of your choice. For each office vote for [~~not more than~~] ***up to*** the number of candidates stated in the [~~sentence~~] ***sentences***: "Vote for not more than [~~____.~~] ***1***" ***(if there is only one office to be filled, such as governor or state senator); or "Vote for up to X;" "X will be elected" (insert the number of offices to be filled).*** If you vote for more than the stated number of candidates, your vote for that office will not be counted.

2) To Vote by Write-In

To vote for a person whose name is not printed on the ballot, write in the name of the person in the "write-in" space. [~~Make the appropriate mark to the right of your choice.~~] ***In cities and towns where an electronic ballot counting device is used for the counting of ballots, as provided in RSA 656:40, there shall be a square, box, oval, or other appropriate symbol for directing the voters where to make the appropriate mark directly to the right of each "write-in" space.***

4:15 Admittance Within Guardrail. Amend RSA 659:21 to read as follows:

659:21 Admittance Within Guardrail. No person other than ***representatives of the secretary of state, representatives of the attorney general,*** the election officers, the voters admitted or those admitted to aid a voter pursuant to RSA 659:20 shall be permitted within the guardrail except by the authority of the election officers and, then, only for the purpose of keeping order and enforcing the law.

4:16 Folding and Depositing; Casting Ballots. Amend RSA 659:23 to read as follows:

659:23 [~~Folding and Depositing Ballot~~] ***Casting Ballots***.

I. Before leaving the voting booth ***or voting privacy screen in a hand-count polling place***, the voter shall fold his ballot in the same way it was folded when received by him and shall keep it folded so that the marks on it cannot be seen. ~~He~~ shall then proceed to the checkout table and shall announce his name to the town clerk who shall repeat the name and place a mark beside it on his checklist. The voter shall then

present his ballot with the official endorsement uppermost to the moderator who shall then deposit the ballot in the ballot box.

II. [~~The provisions of paragraph I shall not apply in cities and towns which use one or more electronic ballot counting devices for the counting of ballots, as provided in RSA 656:40.~~] ***In cities and towns where an electronic ballot counting device is used for the counting of ballots, as provided in RSA 656:40, a voter, after leaving the voting booth or voting privacy screen, shall feed their ballot into the electronic ballot counting device or follow the moderator's instruction for casting the ballot before leaving the guardrail. Privacy folders shall be available at the polling place for voters to use when carrying the marked ballot from the voting booth or voting privacy screen to the ballot counting device.***

4:17 Time Allowed for Voting. Amend RSA 659:25 to read as follows:

659:25 Time Allowed for Voting. The voter shall mark and deliver the ballot without undue delay and shall leave the enclosed space within the guardrail as soon as he or she has delivered the ballot to the moderator ***or fed their ballot into the electronic ballot counting device in accordance with RSA 659:23***. ***Except as provided in RSA 659:20,*** no voter shall be allowed to occupy a voting booth ***or voting privacy screen*** already occupied by another voter nor be allowed to remain within the enclosed space more than the time determined by the moderator.

4:18 Voter Instruction Cards to be Posted; Voting Privacy Screen. Amend RSA 658:28 to read as follows:

658:28 Voter Instruction Cards to be Posted. The secretary of state shall also prepare full instructions for the guidance of voters at such elections as to obtaining ballots, the manner of marking them, the method of gaining assistance and obtaining new ballots in place of those accidentally spoiled. He shall cause the same to be printed on separate cards to be called voter instruction cards and shall furnish a suitable number of the same to each town and ward clerk. Each town and ward clerk shall cause one voter instruction card to be posted in each voting booth ***and voting privacy screen*** and not less than 3 such cards to be posted immediately outside the guardrail in the polling place.

4:19 Assault; Tampering; Attempt to Injure; Attempt to Destroy. Amend RSA 659:41 to read as follows:

659:41 Assault, Etc. Any person who shall assault a town, city, or ward officer as provided in RSA 631 in the discharge of any duty of his office at any election shall be guilty of a class A felony or a class B felony, but never less than a class B felony, other provisions of the law to the contrary notwithstanding. Any person who shall take away, ***tamper with,*** injure***, attempt to injure,*** [~~or~~] destroy***, or attempt to destroy*** the ballot box or checklist when in use at any election shall be guilty of a class B felony.

4:20 Tampering with Electronic Ballot Counting Devices. Amend RSA 659:42 to read as follows:

659:42 Tampering With Electronic Ballot Counting Devices. Whoever shall ***take away,*** tamper with***,*** [~~or~~] injure***,*** [~~or~~] attempt to injure***, destroy, or attempt to destroy*** any electronic ballot counting device for the counting of ballots to be used or being used in an election or whoever shall prevent or attempt to prevent the correct operation of such device or whoever shall tamper with software used in the counting of ballots or design such software so as to cause incorrect tabulation of the ballots or any unauthorized person who shall make or have in his or her possession a key to an electronic ballot counting device to be used or

being used in an election shall be guilty of a class B felony if a natural person or guilty of a felony if any other person.

4:21 Absentee Ballots Received Late. Amend RSA 659:47 to read as follows:

659:47 Absentee Ballots Received Late. No absentee ballot shall be processed or counted unless it is delivered to the moderator at the proper polling place [~~prior to the closing of the polls~~] ***by the time identified in RSA 659:49, subject to exceptions identified in RSA 657:21-a and RSA 657:22***.

4:22 Forms Not in Order. Amend RSA 659:53 to read as follows:

659:53 Forms Not in Order.

I. Except as provided in paragraph II, if the moderator finds that the absentee voter is not entitled to vote, the moderator shall not open the envelope ***containing the ballot*** and shall mark across the face of the envelope the reason the ballot is rejected, such as "rejected as not a voter" "voted in person," "affidavit improperly executed," "not signed by proper person," or whatever the reason is and shall record next to the name of the absentee voter on the clerk's list of absentee voter applicants prepared pursuant to RSA 657:15 the word "rejected" and the reason for the rejection. The clerk shall record this information in the statewide centralized voter registration database. The moderator shall save all the unopened envelopes and shall preserve the envelopes with the ballots cast at the election as provided in RSA 659:101.

II. If a UOCAVA voter or voter using the accessible system for voters with a print disability mails in their ballot using an envelope other than the affidavit and return envelope provided by the secretary of state under RSA 657:7, the moderator may open the envelope to determine if a signed affidavit is enclosed. If the moderator finds that the voter is not entitled to vote after opening the envelope to determine if a signed affidavit is enclosed, the moderator shall proceed as described in paragraph I.

4:23 Counting Write-In Votes. Amend RSA 659:64-a to read as follows:

659:64-a Counting Write-In Votes.

I. In a town or city that uses a ballot counting device approved by the ballot law commission pursuant to RSA 656:40 and which prints ***or digitally displays*** an image of all write-in votes as part of the device's report of votes cast, a moderator may use the printed ***or digitally displayed*** images to count write-in votes in place of examining each ballot to obtain the name of the person who received a write-in vote.

II. The moderator shall cause all write-in votes, whether viewed on the ballot***,*** [~~or~~] on the print out, ***or on the digital display*** to be examined for write-in votes that are for a person whose name is printed on the ballot as a candidate. Provided the voter did not overvote for that office, a write-in vote for a person whose name is on the ballot, shall be counted as a vote for that candidate. The moderator shall include that vote in the total of the number of votes cast for that candidate, adding votes by write-in to votes by a marked oval.

III. A ballot where the voter marked the oval beside the name of a candidate whose name is printed on the ballot and also wrote that same candidates name in as a write-in shall be counted as one vote for that candidate. The moderator shall include that one vote in the total number of votes cast for that candidate. The write-in shall not be counted separately as a write-in vote.

IV. [~~If the moderator shall not use the device report of printed images of write-in votes to fulfill the requirement for publicly announcing all persons receiving votes and the number of votes that person~~

~~received, the printed images shall be stored for future reference and kept in the possession of the town or city clerk. If write in votes are tallied using the device report, the report shall be marked "name on ballot" or "NOB" beside each write-in vote that was counted as a vote for a candidate whose name was printed on the ballot.~~

~~V.~~] If the device report ***or the digital image*** is used to tally write-in votes, a copy of the report shall be preserved with the ballots used at the election. The printed report ***or digital image*** showing the write-in votes in the voter's handwriting shall be a non-public record, and shall be exempt from RSA 91-A. The moderator shall also provide the clerk with a copy of the printed ***or digital*** images of all write-in votes to be available as a non-public record to assist with post-election reporting.

[~~VI.~~] ***V.*** For all state elections, if used in the ballot counting process, the moderator and the clerk shall retain a copy of the printed ***and the digital*** images of all write-in votes to be available for reference if needed to resolve questions regarding the return of votes. The copy shall be a non-public document and shall be stored and used in a manner that limits the risk of exposing, through recognition of handwriting, the candidate written in by any voter.

4:24 General Content of Return. Amend RSA 659:73 to read as follows:

659:73 General Content of Return.

I. The election return forms shall be submitted on paper and electronically immediately after the completion of the vote count in the manner prescribed by the secretary of state. The return of votes shall include, but not be limited to:

(a) The name of each candidate printed on the ballot and the number of votes that candidate received for the listed office including any write-in votes for the same office on the same ballot where the voter did not mark the printed candidate name.

(b) For each office the ***name and*** total number of votes cast for each write-in candidate [~~who received 5 or more votes and the candidate's name, along with the aggregate number of all other write-in votes cast for each candidate receiving less than 5 votes~~], excluding write-in votes for candidates whose names were printed on the ballot where the voter did not mark the printed candidate name and the vote is reported under subparagraph (a). ***The return shall also include the sum of all write-in votes. In the sum do not include the write-in votes for candidates whose names are printed on the ballot where the vote is reported under subparagraph (a).***

(c) For any question submitted to the voters:

(1) The number of affirmative votes.

(2) The number of negative votes.

(d) In a primary, the number of ballots cast for each party.

(e) In a general election, the number of ballots cast.

(f) For each contest or ballot question, the number of overvotes and undervotes.

II. [~~Within 48 hours of the closing of the polls or other time ordered by the secretary of state, the moderator shall forward to the secretary of state a list of all write-in candidates receiving between one and 4 votes in the election.~~

[~~III~~]. The secretary of state shall provide guidance for completing the return of votes in the election procedure manual issued pursuant to RSA 652:22. The secretary of state may provide an electronic version of the return of votes capable of being used on a computer at the polling place to assist moderators and clerks in completing and submitting the paper and electronic forms.

[~~IV.~~] ***III.*** The moderator shall fill out a moderator's ***post-election*** certificate prepared by the secretary of state, which shall be recorded and signed by the moderator within 48 hours of the closing of the polls or other time ordered by the secretary of state and submitted to the clerk. The [~~worksheet~~] ***post-election certificate*** shall include, but not be limited to:

(a) The number of official ballots received from the secretary of state brought to the polling place by the city or town clerk on election day, excluding ballots marked as test ballots and used prior to election day to test an electronic ballot counting device.

(b) The number of official ballots cast on election day.

(c) If the polling place runs out of official ballots, the number of absentee ballots used as official ballots and cast.

(d) If the polling place runs out of official ballots, the number of [~~photocopy~~] ***photocopied*** ballots used as official ballots and cast.

(e) [~~The number of Accessible Voting System ballots cast.~~

~~(f)~~] The number of state absentee ballots cast.

[~~(g)~~] ***(f)*** The number of federal offices only absentee ballots cast.

[~~(h)~~] ***(g)*** The number of state write-in absentee ballots cast.

[~~(i)~~] ***(h)*** The number of federal write-in absentee ballots cast.

[~~(j)~~] ***(i)*** A comparison of the different methods of tallying ballots cast.

[~~(k) For each election, the number of over voted ballots.~~

~~(l) For each contest or ballot question, the number of overvotes and undervotes.~~]

[~~V.~~] ***IV.*** The moderator shall record and sign a names on checklist form within 48 hours of the closing of the polls, unless the secretary of state directs otherwise, and shall submit the form to the secretary of state, with a copy to the clerk. The names on checklist form shall include, but not be limited to:

(a) The number of people who registered to vote on election day.

(b) For each party, the total number of voters registered as members of the party.

(c) The number of undeclared voters that cast ballots for each party at a state or presidential primary election.

(d) The number of undeclared voters that returned to undeclared after voting in a state or presidential primary election.

[~~VI.~~] ***V.*** The moderator shall record and sign a ballots cast form prepared by the secretary of state within 48 hours of the closing of the polls, or other time ordered by the secretary of state, and shall submit the form to the secretary of state, with a copy to the clerk. The ballots cast form shall include, but not be limited to:

(a) The number of ***official election day*** ballots cast[~~.~~]***;***

(b) The number of absentee ballots cast[~~.~~]*;*

(c) The number of federal office only cast; and

(d) The total number of ballots cast.

[~~VII.~~] *VI.* The town or city clerk may require that forms be completed under this section earlier than the time required by the secretary of state.

4:25 Forwarding; Retaining Copies of Return. Amend RSA 659:75, II to read as follows:

II. For a city or town that uses an [~~AccuVote~~] electronic ballot counting device in a state election, the town or ward clerk shall print and forward a paper copy of the [~~long report tape~~] *results report* to the secretary of state with the return of votes form and shall keep a paper copy of the [~~long report tape~~] *results report* with the paper return of votes form that is retained by the town or city clerk in accordance with paragraph I.

4:26 New Section; Audit Authorized. Amend RSA 660 by inserting after section 31 the following new section:

660:32 Audit Authorized. The secretary of state is hereby authorized to conduct an audit of electronic ballot counting devices used in presidential primary, state primary, and state general elections. Except where otherwise provided by New Hampshire law, the secretary of state shall develop the audit plan. The secretary of state shall make the results of the audits available prior to 12:00 P.M. on the Friday following the election. The secretary of state shall also report the results to the ballot law commission and the chairs of the house of representatives and senate standing committees with jurisdiction over election law.

4:27 Alternate Member. Amend RSA 665:2 to read as follows:

665:2 Alternate Member. There shall be 5 members present in person at all meetings. In case any member of the commission is absent from any meeting or unable to perform his or her duties or disqualifies himself or herself as commissioner, an alternate member who shall have the same qualifications as those of the commissioner whose place he or she is temporarily filling shall perform the duties of the commissioner. *If a vacancy still exists the chair of the commission may choose a replacement from any other alternate attending the meeting.*

4:28 Preparation of Voting Materials. Amend RSA 669:23 to read as follows:

669:23 Preparation of Voting Materials.

I. The town clerk shall prepare the official ballots for the town and shall arrange the names of candidates upon said ballots in parallel columns. Immediately above the names of each block of candidates shall be printed the title of the office for which they are candidates, such as "For Selectman." Below the title of each office shall be printed in small but easily legible [~~type the words "Vote for not more than (here insert a number designating how many persons are to be voted for)."~~] *letters:*

(a) "Vote for not more than 1: (if there is only one office to be filled)" or

(b) "Vote for up to X; X will be elected" (insert the number of offices to be filled).

[~~Directly to the right of the name of each candidate.~~]

II. In cities and towns where an electronic ballot counting device is used for the counting of ballots, as provided in RSA 656:40, there shall be a square*, box, oval, or other appropriate symbol for directing voters where to make the appropriate mark directly to the right of the name of each candidate*.

Whenever there are 2 or more candidates for the same office the names shall be printed upon the ballot in the alphabetical order of their surnames according to the alphabetization procedure established in RSA 656:5-a. Following the names printed on the ballot under the title of each office, there shall be as many blank lines as there are persons to be elected to that office *which a voter may use to write in the name of any person for whom the voter desires to vote. In cities and towns where an electronic ballot counting device is used for the counting of ballots, as provided in RSA 656:40, there shall be a square, box, oval, or other appropriate symbol for directing the voters where to make the appropriate mark directly to the right of each blank line*.

4:29 Paper, Uniformity, Endorsement. Amend RSA 669:24 to read as follows:

669:24 Paper, Uniformity, Endorsement. The ballots shall be printed on plain white paper, in weight not less than that of ordinary printing paper; provided, however, that if more than one ballot is used during any town election, each ballot shall be of a different color*, or display a differently colored header on white paper,* than any other ballot used at the election. There shall be no impression or mark to distinguish one ballot from another. The names of all candidates shall be printed in uniform type and the ballots shall be folded so that their width and length when folded shall be uniform. On the back, or at the top of the face, of each ballot shall be printed the words "Official Ballot for the Town of _____ ," the date of the election, and a facsimile of the signature of the town clerk who prepared the ballot. For ballots transmitted electronically, the words "Official Ballot for the Town of _____ " shall be located at the top of the face of the ballot.

4:30 Counting Ballots. RSA 671:26 is repealed and reenacted to read as follows:

671:26 Counting Ballots.

I. The town election officials shall act in like capacity for the school district in conducting the school district election.

II. In a hand-count polling place, except as provided in RSA 671:26, IV, after the close of the polls, the town election officials shall turn all school district ballots over to the moderator of the school district, who shall then proceed to count the ballots publicly with the assistance of such legal voters of the district as the moderator of the school district shall appoint, and announce the name of every person voted for, the number of votes for each person, the winner of each office, and the results of each question.

III. In polling places which use an electronic ballot counting device for the counting of ballots, except as provided in RSA 671:26, IV, after the close of the polls, the town election officials, as provided in RSA 656:40, shall turn all school district ballots and device results over to the moderator of the school district, who shall then count write-in votes and ballots deposited into the hand-count bin of the electronic ballot counting device publicly with the assistance of such legal voters of the district as the moderator of the school district shall appoint. The moderator of the school district shall then proceed to combine the write-in and hand-count results with the electronic ballot counting device's results and announce the name of every person voted for, the number of votes for each person, the winner of each office, and the results of each question.

IV. In the case of cooperative school districts, within 24 hours, the town clerk shall forward to the school district clerk a list of the number of votes received by each candidate for school district office and

for each question. The list shall be signed by the town clerk and witnessed by the town moderator. Upon receipt of the list the cooperative school district shall record the results from each town and shall, when the results from all towns within the district have been recorded, announce the name of every person voted for, the number of votes for each person, the winner of each office, and the results of each question.

4:31 Color of Ballots. Amend RSA 44:20 to read as follows:

44:20 Color of Ballots. In cities which use more than one ballot during any city election, each ballot shall be of a different color*, or display a differently colored header on white paper,* than any other ballot used at the election.

4:32 Effective Date. This act shall take effect February 1, 2024.

Approved: March 06, 2024
Effective Date: February 01, 2024