HB 599-FN - AS INTRODUCED

2023 SESSION

23-0634
06/04

HOUSE BILL ***599-FN***

AN ACT relative to requiring an audit of the November 2022 election results.

SPONSORS: Rep. Panek, Hills. 1; Rep. Ulery, Hills. 13; Rep. McCarter, Belk. 8; Rep. Tenczar, Hills. 1

COMMITTEE: Election Law

ANALYSIS

This bill establishes an audit of the November 2022 election results.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 599-FN - AS INTRODUCED

23-0634
06/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to requiring an audit of the November 2022 election results.

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 8, 2022 election for the races of governor, United States senate and United States Congress of 15 New Hampshire towns 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 assess the election process and controls in place to manage the complete election process. This will include ballot ordering, printing and chain of custody, 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, ballot 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 and the business controls used to insure election integrity/ voter confidence. Should the results of the forensic audit yield a deviation in the official election results for any candidate of greater than 2% of total votes, the audit shall expand immediately to 2 large county audits (Rockingham or Hillsborough) to determine the breadth and scope of the election issues across the state of New Hampshire.

2 Town Selection. The 15 towns shall be determined by selecting the 15 towns with the highest percentage of same day voters plus absentee votes when measured as percentage of total voters in the 2022 midterm election using the following formula:

((Number of Same Day Registrants + Absentee voters)/ Total Votes Cast).

3 Forensic Election Audit Team. A forensic election audit team shall be formed to manage the third party audit described in section 4 of this act. 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 forensic election audit team shall hire the technical lead. 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.

4 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 to 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 each town shall be responsible for transport of the ballot counting devices used in the general election on November 8, 2022 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 8, 2022 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 the 15 towns shall provide the election audit team whatever information or documentation the auditors require to perform the audit.

5 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 perform a risk assessment and 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 the ballot law commission. The reports shall be made available to the public within 3 days of completion.

6 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 audited as to results of the audit and any resulting recommendations.

7 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 affect an accurate count.

8 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.

9 Affirmation of Ballot Law Commission Ruling. The results of the audit shall not alter the official results of the town races as determined by the ruling of the ballot law commission on November 8, 2022.

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

11 Election Audit Fund; Appropriation.

I. There is established in the state treasury an election audit fund that 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, 2024 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.

12 Effective Date. This act shall take effect upon its passage.

LBA
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Revised 1/30/23

HB 599-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to requiring an audit of the November 2022 election results.

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

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
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 [X] Other - Election Audit Fund			

LOCAL:

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

METHODOLOGY:

This bill establishes an audit of the November 2022 election results for Governor, United States Senate and the United States Congress for 15 New Hampshire towns. This Audit requires a forensic election audit be completed within 3 months of the passage of this bill. This bill also establishes an Election Audit Fund which shall be administered by the Secretary of State. In this fund 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 and any other election audits. An appropriation of $150,000 is appropriated to the Election Audit Fund for fiscal year June 30, 2024.

The Department of State indicates this bill would require 15 towns to have a forensic election audit of the November 8 ,2022 election. The Department states this forensic audit would include a facility staffed with guards and strong security measures and keep logs of all entry and exits as well as having the town responsible for the transportation of ballot counting devices to and from the audit. The Department states in 2021, the Legislature passed SB 43 authorizing an audit of the Rockingham County district 7 State Representative race. The audit had a more limited scope as it was only one town and one race compared to 15 towns and three races requested in this bill. The cost of the Rockingham Audit was approximately $190,000. This cost does not include state and local employees involved in the process or any costs paid by

the town for their auditor. Comparatively speaking, this forensic audit expands the scope of the audit and the requirements of this audit which will result in a significant increase in the cost and time it will take for the third party audit company to complete this process.

AGENCIES CONTACTED:

Department of State