

CHAPTER 174
HB 270 - FINAL VERSION

26Mar2025... 1053h
05/08/2025 1834s

2025 SESSION

25-0546
08/06

HOUSE BILL **270**

AN ACT requiring the preservation of electronic ballot counting device external storage devices.

SPONSORS: Rep. Burnham, Straf. 2; Rep. Ankarberg, Straf. 7; Rep. DeRoy, Straf. 3; Rep. Potenza, Straf. 19; Rep. Wherry, Hills. 13; Rep. Wood, Merr. 13; Rep. Berry, Hills. 44

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill requires preservation of electronic ballot counting device external storage devices with other election material until the contest is settled and all appeals have expired or at least 22 months after elections, whichever is longer.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT requiring the preservation of electronic ballot counting device external storage devices.

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

1 174:1 Preservation of Election Material. Amend RSA 33-A:3-a, XXXVI and XXXVII to read as
2 follows:

3 XXXVI. Elections-federal elections: ballots and absentee ballot applications, affidavit envelopes,
4 [and] lists, ***and electronic ballot counting device external storage devices***. by the town clerk until the
5 contest is settled and all appeals have expired or at least 22 months after the election, whichever is
6 longer. ***Extra electronic ballot counting device external storage devices programmed for, but not used***
7 ***during the election are exempt from preservation.***

8 XXXVII. Elections-not federal: ballots and absentee ballot applications, affidavit envelopes, [and]
9 lists, ***and electronic ballot counting device external storage devices***. by the town clerk until the contest is
10 settled and all appeals have expired or at least 60 days after the election, whichever is longer. ***Extra***
11 ***electronic ballot counting device external storage devices programmed for, but not used during the***
12 ***election are exempt from preservation.***

13 174:2 Electronic Data; Electronic Ballot Counting Devices. Amend RSA 656:42, VIII to read as
14 follows:

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

18 ***(b) Whenever the town or city clerk receives a programmed external storage device from the***
19 ***vendor, the clerk shall lock any programmed external storage device not inserted into an electronic ballot***
20 ***counting device in a safe and record the names of individuals that have access to such safe in the activity***
21 ***log.***

22 ~~[(b)]~~ ***(c)*** The town or city clerk shall preserve each [memory] ***external storage*** device used at
23 each election ~~[until after the recounts for such election are complete and any and all legal challenges to~~
24 ~~the outcome of that election are adjudicated]~~ ***as provided in RSA 33-A:3-a or as directed by the secretary***
25 ***of state.***

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

28 ***(d)(1)*** To help ensure that the counting device cannot be tampered with or improperly
29 accessed, the town or city clerk shall employ electronic ballot counting device seals and seal the

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1 electronic ballot counting device in all places specified by the secretary of state in the election procedure
2 manual published pursuant to RSA 652:22.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (A) The test ballots.

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

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

16 (10) The clerk shall test all electronic ballot counting devices and *programmed external*
17 *storage* [memory] devices in the possession of the town or city.

18 (11) Prior to placing the electronic ballot counting device or any [memory] *programmed*
19 *external storage* device into service in an election, the moderator and the clerk shall certify on the pre-
20 election certificate required by RSA 658:32 that there is evidence that pre-election testing was conducted
21 on each electronic ballot counting device and each [memory] *programmed external storage* device in the
22 town or city clerk's possession, and that these ballot counting devices and [memory] *programmed external*
23 *storage* devices have passed the test. The moderator and clerk shall also certify on the pre-election
24 certificate required by RSA 658:32 that all electronic ballot counting device seals are present, all seals
25 have been maintained intact, and that any seals which have been broken in accordance with this section
26 have been appropriately resealed and the activity log properly recorded and signed.

27 174:3 Effective Date. This act shall take effect 60 days after its passage

Approved: July 15, 2025
Effective Date: September 13, 2025

