

Amendment to HB 270

1 Amend the title of the bill by replacing it with the following:

2

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

5

6 Amend the bill by replacing all after the enacting clause with the following:

7

8 1 Preservation of Election Material. Amend RSA 33-A:3-a, XXXVI and XXXVII to read as
9 follows:

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

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

20 2 Electronic Data; Electronic Ballot Counting Devices. Amend RSA 656:42, VIII to read as
21 follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (A) The test ballots.

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

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

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

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

37 3 Effective Date. This act shall take effect 60 days after its passage.

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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.