

Rep. Read, Rock. 10
Rep. H. Howard, Straf. 4
Rep. Wherry, Hills. 13
Rep. Wood, Merr. 13
Rep. Panek, Hills. 1
Rep. Kennedy, Hills. 13
Rep. Burnham, Straf. 2
Rep. Berry, Hills. 39
March 3, 2023
2023-0735h
08/10

Amendment to HB 387

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

2

3 1 Assistance in Voting. Amend RSA 659:20 to read as follows:

4 659:20 Assistance in Voting.

5 **I.** Any voter who declares to the moderator under oath that said voter needs assistance
6 marking his or her ballot shall, upon the voter's choice and request after the moderator has informed
7 the voter of the accessible voting options that are available at the polling place, receive the
8 assistance of one or both of the inspectors of election detailed for that purpose by the moderator or of
9 a person of the voter's choice provided that the person is not the voter's employer or union official.
10 Such person so assisting shall be sworn, shall mark the ballot as directed by said voter, and shall
11 thereafter give no information regarding the same. Such person so assisting shall leave the space
12 within the guardrail with the voter.

13 **II.** *If a voter uses an accessible voting system, the moderator shall assure that at*
14 *least 2 other persons also vote using the accessible voting system in order to protect the*
15 *secrecy of the ballot.*

16 2 New Paragraph; Showing or Specially Marking Ballot. Amend RSA 659:35 by inserting after
17 paragraph VI the following new paragraph:

18 VII. An election official or any other person who witnesses a mark on a ballot that allows
19 tracing it to a voter shall report it to the moderator, who shall report it to the attorney general for
20 possible prosecution.

21 3 Sealing and Certifying Ballots. Amend RSA 659:95, II to read as follows:

22 II. [~~Ballots, including cast, canceled, and uncast ballots and~~] Successfully challenged and
23 rejected absentee ballots still contained in their envelopes, prepared or preserved in accordance with
24 the election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to
25 [~~any ballots or~~] absentee voter affidavits prepared for or used in any election conducted by the state
26 or any political subdivision, including federal elections.

27 4 Disposal of Ballots. Amend RSA 660:16, II to read as follows:

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1 II. [~~Ballots, including cast, canceled, and uncast ballots and~~] Successfully challenged
2 absentee ballots still contained in their envelopes, prepared or preserved in accordance with the
3 election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to [~~any~~
4 ~~ballots or~~] absentee voter affidavit envelopes prepared for or used in any election conducted by the
5 state or any political subdivision, including federal elections.

6 5 New Subdivision; Public Review of Ballots. Amend RSA 660 by inserting after section 31 the
7 following new subdivision:

8 Public Review of Ballots

9 660:32 Statement of Purpose. The state of New Hampshire recognizes that the fundamental
10 right to vote includes the right for voters to have their votes counted and reported accurately, as
11 provided in Part I, Articles 1, 2, 7, 8, and 11 and Part II, Articles 5, 32, 41, and 84 of the state
12 constitution. Therefore, the public may view cast ballots after the recount period is over and any
13 pending legal action has been resolved, to ensure accuracy of the vote count and evaluate the
14 performance of election officials. Review of ballots shall be in a manner that is least restrictive to
15 the public and that is efficient and least cumbersome to the ballot custodian or designee. The
16 secretary of state may ask the attorney general to supervise the review of ballots.

17 660:33 Custody of Ballot. Town and city clerks shall retain custody of the ballots until the
18 retention period has ended, 22 months for all federal offices, 60 days for all other offices. In the case
19 where custody is transferred for a recount the secretary of state shall remain the custodian until the
20 retention period has ended.

21 660:34 Application and Timing of Access.

22 I. Review of ballots shall only be allowed after the recount period for that election and any
23 pending legal action related to the election has ended. Application for ballot review shall be made in
24 writing to the secretary of state, stating specific times of availability or unavailability, if applicable.

25 II. The ballots shall be made available for inspection in a timely manner. For the purposes
26 of this section, "ballots" includes cast, canceled, and uncast ballots.

27 III. The secretary of state shall schedule the appointment within 5 business days of
28 receiving the request to accommodate those wishing to review ballots and the individual supervising
29 the review. The appointment for review shall be scheduled in a timely manner. Citizens requesting
30 the review may recruit counters if needed.

31 IV. Additional appointments may be necessary to complete the review or answer new
32 questions that may arise.

33 V. Any person wishing to review ballots may make a video recording or take pictures of the
34 viewing of the ballots. The secretary of state may take and release their own video or pictures of the
35 viewing of the ballots.

36 VI. The secretary of state shall charge a petitioner a fee to cover the total cost of viewing the
37 ballots. The total cost shall be itemized and presented to the petitioner.

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1 VII. A petitioner may only have one active request for review at any given time.

2 660:35 Supervision of Ballot Review and Box Contents.

3 I. It is the duty of the custodian or designee to ensure the integrity of the ballots and
4 contents of the sealed boxes.

5 II. The custodian shall remove the seal from boxes in the presence of those requesting the
6 review and those who will supervise.

7 III. Reviewers shall witness the identification of seals removed and new seals applied after
8 review.

9 IV. Depending on the number of boxes involved and time allowed for initial review, the
10 supervisor and reviewer may agree whether one or more boxes shall be opened at one time.

11 V. No person shall in any manner, nor for any reason, make any mark upon either the face
12 or reverse side of any ballots during the counting process. All notes shall be done in pencil upon
13 separate pieces of paper.

14 VI. Ballots shall not be traceable to a voter. If there are fewer than 4 absentee ballots cast
15 in a location, those ballots may be excluded from the review to maintain the confidentiality of the
16 secret ballots. If the reviewer or supervisor witnesses any identifying marks on a ballot that would
17 allow it to be traced to a voter, the witness shall report the violation to the secretary of state, who
18 shall report it to the attorney general.

19 VII. Reasonable administrative regulations designed to ensure the integrity of the ballots
20 may be established by the clerks in conjunction with the secretary of state. Such regulations, if
21 required, shall be limited to requiring the individual seeking access to provide identification and sign
22 his or her name, and the keeping of bags, briefcases, or other items off the table where ballots are
23 placed.

24 660:36 Denial of Access. In extraordinary circumstances, the secretary of state, after
25 consultation with the attorney general, may deny access to ballots to certain individuals for good
26 cause and give the reasons in writing. Good cause shall be limited to previous conviction for theft or
27 fraud, or prior destruction of, defacement of, or tampering with public records. Denial of access may
28 be appealed to the superior court.

29 660:37 Fraud or Error. The secretary of state shall request that any person reviewing ballots
30 under this subdivision report to the state political parties and to the moderator any evidence of fraud
31 or error in any vote count of one percent or more.

32 6 Preservation of Challenged Absentee Ballots. Amend RSA 669:33, II to read as follows:

33 II. [~~Ballots, including cast, canceled, and uncast ballots and~~] Successfully challenged
34 absentee ballots still contained in their envelopes, prepared or preserved in accordance with the
35 election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to [~~any~~
36 ~~ballots or~~] absentee voter affidavit envelopes prepared for or used in any election conducted by the
37 state or any political subdivision, including federal elections.

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1 7 New Paragraph; Exemptions; Access to Governmental Records and Meetings. Amend RSA 91-
2 A:5 by inserting after paragraph XIII the following new paragraph:

3 XIV. Ballot images and cast vote records shall be retained as RSA 33-A requires. Ballot
4 images and cast vote records shall not be available for public inspection under RSA 660:32 through
5 RSA 660:37 until after the recount period and any legal challenge to an election has ended. Such
6 images and records shall not be exempt from RSA 91-A:4, III-a.

7 8 Rules; Ballots RSA 656:42, IX is repealed and reenacted to read as follows:

8 IX. Any electronic digital image of a marked ballot made by a ballot counting device,
9 whether stored on the device, on a removable memory device, or on a government computer, shall be
10 available for inspection in accordance with the provisions of RSA 660:32 through RSA 660:37. Such
11 electronic digital images shall be subject to the provisions of RSA 91-A.

12 9 Counting Write-In Votes. Amend RSA 659:64-a, V and VI to read as follows:

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

18 VI. For all state elections, if used in the ballot counting process, the moderator and the clerk
19 shall retain a copy of the printed images of all write-in votes to be available for reference if needed to
20 resolve questions regarding the return of votes. [~~The copy shall be a non-public document and shall~~
21 ~~be stored and used in a manner that limits the risk of exposing, through recognition of handwriting,~~
22 ~~the candidate written in by any voter.~~] ***Such printed images shall be made available for***
23 ***inspection in accordance with the provisions of RSA 660:32 through RSA 660:37.***

24 10 Applicability. This act shall only apply to elections that take place after the effective date of
25 this act.

26 11 Effective Date. This act shall take effect 60 days after its passage.

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AMENDED ANALYSIS

This bill requires the secretary of state to make ballots or digital images of ballots available to the public upon request.

UNAPPROVED