

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
February 28, 2023
2023-0703h
08/10

Amendment to HB 415

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 to ensure
13 accuracy of the vote count and evaluate the performance of election officials. Review of ballots shall
14 be in a manner that is least restrictive to the public and that is efficient and least cumbersome to the
15 ballot custodian or designee. Town and city clerks may ask the attorney general or a designee of the
16 secretary of state 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 has ended.
23 Application for ballot review shall be made in writing to the custodian of the ballots, stating specific
24 times of availability or unavailability, if applicable.

25 II. The ballots shall be made available for inspection in a timely manner. However,
26 responding to applications for inspection shall not take priority over the previously scheduled work
27 activities of the town or city clerks.

28 III. The custodian shall schedule the appointment within 5 business days to accommodate
29 those wishing to review ballots and the individual supervising the review. Citizens requesting the
30 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 of the viewing of the
34 ballots.

35 VI. Towns and cities may charge a petitioner a reasonable fee to cover the costs of viewing
36 the ballots.

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1 VII. Towns and cities may request reimbursement of additional expenses from the secretary
2 of state from the election fund established under RSA 5:6-d.

3 VIII. To the extent they exist, digital images of ballots are subject to RSA 91-A.

4 660:35 Supervision of Ballot Review and Box Contents.

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

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

9 III. Reviewers shall witness the identification of seals removed and new seals applied after
10 review.

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

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

16 VI. Ballots shall not be traceable to a voter. If there is only one absentee ballot cast in a
17 location, that ballot may be excluded from the review to maintain the confidentiality of the secret
18 ballot. If the reviewer or supervisor witnesses any identifying marks on a ballot that would allow it
19 to be traced to a voter, the witness shall report the violation to the moderator, who shall report it to
20 the attorney general.

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

26 VIII. Supervisors at the local level may include members of the board of recount, other
27 election officials, a designated town employee, or a law enforcement official.

28 660:36 Right To Copy. The right to public access shall include compliance with the provisions of
29 RSA 91-A:4, I.

30 660:37 Denial of Access. In extraordinary circumstances, the custodian of the ballots, after
31 consultation with the attorney general and the secretary of state may deny access to ballots to
32 certain individuals for good cause and give the reasons in writing. Good cause shall be limited to
33 previous conviction for theft or fraud, or prior destruction of, defacement of, or tampering with public
34 records. Denial of access may be appealed to the superior court, with RSA 91:A-8 remedies available
35 if the denial was not based on good cause.

36 660:38 Fraud or Error. The custodian of the ballots shall request that any person reviewing
37 ballots under this subdivision report to the state political parties and to the moderator any evidence

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1 of fraud or error in any vote count of one percent or more. The moderator shall forward any such
2 report to the secretary of state, the attorney general, and, if applicable, local law enforcement
3 authorities.

4 6 Preservation of Challenged Absentee Ballots. Amend RSA 669:33, II to read as follows:

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

10 7 New Paragraph; Exemptions; Access to Governmental Records and Meetings. Amend RSA 91-
11 A:5 by inserting after paragraph XIII the following new paragraph:

12 XII. Ballot images and cast vote records shall be retained as RSA 33-A requires. Ballot
13 images and cast vote records shall not be available for public inspection under RSA 660:32 through
14 RSA 660:38 until after the recount period or any legal challenge to an election has ended. Such
15 images and records shall not be exempt from RSA 91-A:4 III-a.

16 8 Rules; Ballots RSA 656:42, IX is repealed and reenacted to read as follows:

17 IX. Any electronic digital image of a marked ballot made by a ballot counting device,
18 whether stored on the device, on a removable memory device, or on a government computer, shall be
19 available for inspection in accordance with the provisions of RSA 660:32 through RSA 660:38.

20 9 Counting Write-In Votes. Amend RSA 659:64-a, V and VI to read as follows:

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

26 VI. For all state elections, if used in the ballot counting process, the moderator and the clerk
27 shall retain a copy of the printed images of all write-in votes to be available for reference if needed to
28 resolve questions regarding the return of votes. ~~[The copy shall be a non-public document and shall~~
29 ~~be stored and used in a manner that limits the risk of exposing, through recognition of handwriting,~~
30 ~~the candidate written in by any voter.]~~ ***Such printed images shall be made available for***
31 ***inspection in accordance with the provisions of RSA 660:32 through RSA 660:38.***

32 10 Effective Date. This act shall take effect 60 days after its passage.

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AMENDED ANALYSIS

This bill requires the custodian of the ballots to make them available to the public upon request.

This bill also permits election ballots to be viewed pursuant to a right to know request.

UNAPPROVED