

Bill as Introduced

HB 146 - AS INTRODUCED

2019 SESSION

19-0081

11/05

HOUSE BILL

146

AN ACT

relative to the counting of defective ballots.

SPONSORS:

Rep. Belanger, Hills. 27; Rep. Beaulieu, Hills. 45; Sen. Gray, Dist 6

COMMITTEE:

Municipal and County Government

ANALYSIS

This bill modifies recount procedures for towns and village districts.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to the counting of defective ballots.

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

1 1 New Subparagraph; Government of Town Meeting; Conduct of Voting; Secret Ballot
2 Recounts. Amend RSA 40:4-a, II by inserting after subparagraph (b) the following new
3 subparagraph:

4 (c) Prior to conducting any recount pursuant to this section, the moderator shall
5 visually inspect all ballots to identify any that are marked in a way which does not readily admit of
6 counting or that contain any immaterial addition, omission, or irregularity in the preparation or
7 execution of the ballot. Any such ballot shall not be excluded from the recount if the intent of the
8 voter can be readily ascertained by the moderator.

9 2 Government of Town Meeting; Conduct of Voting; Recount. Amend RSA 40:4-c, II to read as
10 follows:

11 II. The recount shall be held at the time and place appointed, and the ballots shall be
12 recounted by the board of recount in accordance with the procedures for recounts of town elections
13 under RSA 669:30-33[.], ***except that prior to recounting cast ballots, the moderator shall***
14 ***visually inspect all ballots to identify any that are marked in a way which does not readily***
15 ***admit of counting or that contain any immaterial addition, omission, or irregularity in***
16 ***the preparation or execution of the ballot. Any such ballot shall not be excluded from the***
17 ***recount if the intent of the voter can be readily ascertained by the moderator.***

18 3 Village Districts; Voting at District Meetings. Amend RSA 52:11-a to read as follows:

19 52:11-a Voting at District Meetings. Votes at district meetings shall be conducted according to
20 the procedures established for town meetings in RSA 40:4-a[~~4-b~~] ***through 4-f*** and 6.

21 4 Effective Date. This act shall take effect 60 days after its passage.

HB 146 - AS AMENDED BY THE SENATE

14Feb2019... 0049h
05/02/2019 1629s

2019 SESSION

19-0081
11/05

HOUSE BILL **146**

AN ACT relative to the counting of defective ballots.

SPONSORS: Rep. Belanger, Hills. 27; Rep. Beaulieu, Hills. 45; Sen. Gray, Dist 6

COMMITTEE: Municipal and County Government

AMENDED ANALYSIS

This bill requires that a ballot shall be counted in any municipal vote if the intent of the voter can be determined, regardless of whether the voter followed any voting instructions issued prior to the vote.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 146 - AS AMENDED BY THE SENATE

14Feb2019... 0049h
05/02/2019 1629s

19-0081
11/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to the counting of defective ballots.

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

1 1 New Section; Conduct of Voting; Intent of the Voter. Amend RSA 40 by inserting after section
2 4-f the following new section:

3 40:4-g Intent of the Voter. In any vote conducted pursuant to this chapter, every ballot shall be
4 counted if the intent of the voter can be determined, regardless of whether the voter followed any
5 instructions relative to marking the ballot provided before the vote.

6 2 Effective Date. This act shall take effect 60 days after its passage.

CHAPTER 148
HB 146 - FINAL VERSION

14Feb2019... 0049h
05/02/2019 1629s

2019 SESSION

19-0081
11/05

HOUSE BILL **146**

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This bill requires that a ballot shall be counted in any municipal vote if the intent of the voter can be determined, regardless of whether the voter followed any voting instructions issued prior to the vote.

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CHAPTER 148
HB 146 - FINAL VERSION

14Feb2019... 0049h
05/02/2019 1629s

19-0081
11/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to the counting of defective ballots.

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

1 148:1 New Section; Conduct of Voting; Intent of the Voter. Amend RSA 40 by inserting after
2 section 4-f the following new section:

3 40:4-g Intent of the Voter. In any vote conducted pursuant to this chapter, every ballot shall be
4 counted if the intent of the voter can be determined, regardless of whether the voter followed any
5 instructions relative to marking the ballot provided before the vote.

148:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 01, 2019
Effective Date: August 30, 2019

Amendments

Sen. Gray, Dist 6
April 12, 2019
2019-1492s
11/06

Amendment to HB 146

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

2

3 1 New Section; Conduct of Voting; Intent of the Voter. Amend RSA 40 by inserting after
4 section 4-f the following new section:

5 40:4-g Intent of the Voter. In any vote conducted pursuant to this chapter, every ballot shall be
6 counted if the intent of the voter can be determined, regardless of whether the voter followed any
7 instructions relative to marking the ballot provided before the vote.

8 2 Effective Date. This act shall take effect 60 days after its passage.

UNAPPROVED

2019-1492s

AMENDED ANALYSIS

This bill requires that a ballot shall be counted in any municipal vote if the intent of the voter can be determined, regardless of whether the voter followed any voting instructions issued prior to the vote.

UNAPPROVED

Election Law and Municipal Affairs
April 24, 2019
2019-1629s
11/10

Amendment to HB 146

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

2

3 1 New Section; Conduct of Voting; Intent of the Voter. Amend RSA 40 by inserting after
4 section 4-f the following new section:

5 40:4-g Intent of the Voter. In any vote conducted pursuant to this chapter, every ballot shall be
6 counted if the intent of the voter can be determined, regardless of whether the voter followed any
7 instructions relative to marking the ballot provided before the vote.

8 2 Effective Date. This act shall take effect 60 days after its passage.

Amendment to HB 146
- Page 2 -

2019-1629s

AMENDED ANALYSIS

This bill requires that a ballot shall be counted in any municipal vote if the intent of the voter can be determined, regardless of whether the voter followed any voting instructions issued prior to the vote.

Committee Minutes

**AMENDED
SENATE CALENDAR NOTICE
Election Law and Municipal Affairs**

Sen Melanie Levesque, Chair
Sen Tom Sherman, Vice Chair
Sen Jon Morgan, Member
Sen Regina Birdsell, Member
Sen James Gray, Member

Date: March 27, 2019

HEARINGS

Wednesday	04/03/2019	
(Day)	(Date)	
Election Law and Municipal Affairs	LOB 102	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m.	HB 128	establishing a committee to study veterans property tax credits and exemptions.
9:15 a.m.	HB 145	relative to the counting of secret ballots.
9:45 a.m.	HB 146	relative to the counting of defective ballots.
10:15 a.m.	HB 167	allowing the town of Kingston to hold a bonfire event in 2019.
10:30 a.m.	HB 245	relative to the planning board's procedures on plats.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 128

Rep. Comtois

Rep. Abramson

Rep. J. Schmidt

HB 145

Rep. Belanger

Rep. Beaulieu

Sen. Gray

HB 146

Rep. Belanger

Rep. Beaulieu

Sen. Gray

HB 167

Rep. Weyler

Rep. Welch

Rep. Green

Rep. Guthrie

Sen. Birdsell

HB 245

Rep. O'Connor

Rep. Belanger

Tricia Melillo 271-3077

Melanie Levesque
Chairman

Senate Election Law and Municipal Affairs Committee

Tricia Melillo 271-3077

HB 146, relative to the counting of defective ballots.

Hearing Date: April 3, 2019

Members of the Committee Present: Senators Levesque, Sherman, Morgan, Birdsell and Gray

Members of the Committee Absent : None

Bill Analysis: This bill modifies recount procedures for towns and village districts.

Sponsors:

Rep. Belanger

Rep. Beaulieu

Sen. Gray

Who supports the bill: Senator Gray, Representative Belanger, Cordell Johnston

Who opposes the bill: None

Summary of testimony presented in support:

Representative Belanger

- This bill is a follow up to HB 145 regarding the counting of ballots which are considered spoiled ballots.
- He would like to reiterate the moderator may not override existing state law. *Pierce v. Langdon 1970.*
- His testimony from HB 145 is relevant for this bill as well.
- In Article 605 from the NH Municipal Association it states that “ Town and school district meetings held to the same legal standards as state elections specifically in regard to the inclusion of voter intent. Spoiled ballots, if the intent of the voter can be determined, must be counted.”
- Spoiled ballots must be analyzed for voter intent prior to counting the “Yes” and “No” votes to maximize neutrality.
- The decision to include spoiled ballots is not arbitrary. Voters cannot be penalized for not following directions if voter intent can be determined.
- The moderator should not be allowed to change the rules to manipulate the outcome of the vote. In a previously mentioned case, the moderator was instructed (and followed those instructions) to throw the spoiled ballots out.
- Senator Birdsell asked if he was okay if the committee amended HB 145 and HB 146 and merged them into one bill. Representative Belanger said that would be fine.

- Senator Sherman asked if moderators previously have discarded the spoiled ballots. Representative Belanger answered that they have been set aside.
- Senator Levesque asked if the change in this bill includes that the ballots will be set aside. Representative Belanger answered that yes, that is included, and it states that the moderator must review them.
- Senator Levesque asked if this is put into law would it be retroactive. Representative Belanger answered that it would not be.

Cordell Johnston - New Hampshire Municipal Association

- Section one of this bill refers to an RSA 44: A2 sub-paragraph B but there is no sub-paragraph B and it is not referring to the subject of recounts.
- The intent of this bill is accomplished completely in section two of this bill.
- Section one of the bill can be removed because it is redundant.
- Senator Gray offered to make the needed changes to the bills.
- Senator Levesque asked why the declaration of five days is changed to ten days. Representative Belanger answered that five days was not enough time to file with the court if needed.
- Senator Gray stated that the change does make it different from the state elections and asked if the association has a concern with that. Mr. Johnston answered that they do not because this vote takes place at the town business which has a different period, but the state election and town election will both happen on the same day.
- Senator Levesque asked if the additional five days would put bonds that were voted on in jeopardy. Mr. Johnston answered that it would not.

Summary of testimony presented in opposition: None

Speakers

Testimony

The Moderator may not override existing state law. *Pierce v. Langdon*, 110 N.H. 170 (1970).

HB 146 is a follow up to HB 145 regarding counting those ballots considered spoiled ballots.

From: <https://www.nhmunicipal.org/TownAndCity/Article/605>

GOALS:

1. Town and school district meetings held to the same legal standards as state elections specifically inclusive of voter intent. Spoiled ballots, if the intent of the voter can be determined, must be counted.
 - a) The cardinal rule for guidance...if the intent of the voter can be determined with reasonable certainty from an inspection of the ballot...effect must be given to that intent. *Opinion of the Justices*, 116 N.H. 756, 759 (1976)
2. Spoiled ballots must be analyzed for voter intent *prior* to counting the 'Yes' and 'No' votes to maximize neutrality.
3. The decision to include spoiled ballots is not arbitrary. Voters cannot be penalized for not following directions if voter intent can be determined.
4. The moderator should not be allowed to change the rules to manipulate the outcome of the vote. In a previously mentioned case, the moderator was instructed (and followed those instructions) and threw the spoiled ballots out.

Voting Sheets

**Senate Election Law
& Municipal Affairs Committee
EXECUTIVE SESSION RECORD
2019 Session**

Bill # **HB 146**

Hearing date: 4/3/19

Executive Session date: 4/24/19

Motion of: OTP Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Levesque, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Sherman, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Morgan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: OTPAmend Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Levesque, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Sherman, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Morgan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: OTP/A Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Levesque, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Sherman, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Morgan	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Consent M ✓ L ✓ 5-0

Reported out by: Sen. Gray

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Wednesday, April 24, 2019

THE COMMITTEE ON Election Law and Municipal Affairs

to which was referred **HB 146**

AN ACT relative to the counting of defective ballots.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 1629s

Senator James Gray
For the Committee

This bill as amended requires that all ballots cast at Town Meeting shall be counted if the intent of the voter can be determined, regardless of whether the voter followed any voting instructions issued prior to the vote. Adding this to statute will bring clarity and guidance in situations where the moderator needs to decide the validity of a ballot and aligns this statute with RSA 659:64.

Tricia Melillo 271-3077

Docket of HB146**Bill Title:** relative to the counting of defective ballots.*Official Docket of HB146.:*

Date	Body	Description
12/26/2018	H	Introduced 01/02/2019 and referred to Municipal and County Government HJ 2 P. 39
1/9/2019	H	Public Hearing: 01/16/2019 11:20 am LOB 301
1/16/2019	H	Executive Session: 01/23/2019 01:00 pm LOB 301
1/29/2019	H	Committee Report: Ought to Pass with Amendment #2019-0049h for 02/14/2019 (Vote 19-0; CC) HC 11 P. 9
2/14/2019	H	Amendment #2019-0049h : AA VV 02/14/2019 HJ 5 P. 19
2/14/2019	H	Ought to Pass with Amendment 2019-0049h: MA VV 02/14/2019 HJ 5 P. 19
3/12/2019	S	Introduced 03/07/2019 and Referred to Election Law and Municipal Affairs; SJ 8
3/27/2019	S	Hearing: 04/03/2019, Room 102, LOB, 09:45 am; SC 16
4/24/2019	S	Committee Report: Ought to Pass with Amendment #2019-1629s , 05/02/2019; Vote 5-0; CC; SC 20
5/2/2019	S	Committee Amendment #2019-1629s , AA, VV; 05/02/2019; SJ 15
5/2/2019	S	Ought to Pass with Amendment 2019-1629s, MA, VV; OT3rdg; 05/02/2019; SJ 15
5/23/2019	H	House Concurs with Senate Amendment 1629s (Rep. Carson): MA VV 05/23/2019 HJ 16 P. 11
6/12/2019	S	Enrolled (In recess 06/06/2019); SJ 20
6/12/2019	H	Enrolled 06/06/2019 HJ 18 P. 47
7/3/2019	H	Signed by Governor Sununu 07/01/2019; Chapter 148; Eff: 08/30/2019

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 146

Senate Committee: Elec. Law + MA

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 1492

- amendment # 1629

- amendment # _____

- amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # _____

- amendment # _____

- amendment # _____

- amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

Enrolled Bill Amendment(s)

Governor's Veto Message

All available versions of the bill: {Clerk's Office}

as amended by the senate as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Committee Aide

Date

Senate Clerk's Office JM