

Bill as Introduced

HB 345 - AS AMENDED BY THE HOUSE

27Feb2019... 0385h

2019 SESSION

19-0677

11/10

HOUSE BILL

345

AN ACT

relative to certification of devices for the electronic counting of ballots.

SPONSORS:

Rep. Long, Hills. 10; Rep. Bergeron, Hills. 29

COMMITTEE:

Election Law

ANALYSIS

This bill requires the ballot law commission to approve a new secure electronic ballot counting device at regular intervals.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT . . . relative to certification of devices for the electronic counting of ballots.

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

1 1 Electronic Ballot Counting Devices; Approval by the Ballot Law Commission. Amend RSA
2 656:41 to read as follows:

3 656:41 Approval by Ballot Law Commission. The ballot law commission shall act as a board to
4 examine devices for the electronic counting of ballots. The commission shall, whenever requested,
5 examine any device which may be capable of meeting the requirements for elections held in this
6 state ***and shall, at least every 5 years, review current and new devices to determine***
7 ***whether the devices require upgrading. The commission, after such review, shall file an***
8 ***explanatory report with the secretary of state within 30 days of its determination that***
9 ***outlines the basis for its determination, taking into account such factors as hardware and***
10 ***software standards, policies and procedures, security requirements, and usability.*** The
11 commission shall approve [~~such~~] a device ***upon request*** in its discretion, and no device shall be
12 used in any election in this state unless it reads the voter's choice on a paper ballot and is of a type
13 so approved by the ballot law commission. Any device that is altered must be re-approved before it
14 is used in any election in this state. For the purposes of this section, a device shall be considered
15 altered if any mechanical or electronic part, hardware, software, or programming has been altered.

16 2 Effective Date. This act shall take effect 60 days after its passage.

CHAPTER 128
HB 345 - FINAL VERSION

27Feb2019... 0385h

2019 SESSION

19-0677
11/10

HOUSE BILL **345**

AN ACT relative to certification of devices for the electronic counting of ballots.

SPONSORS: Rep. Long, Hills. 10; Rep. Bergeron, Hills. 29

COMMITTEE: Election Law

ANALYSIS

This bill requires the ballot law commission to approve a new secure electronic ballot counting device at regular intervals.

.....

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.

CHAPTER 128
HB 345 - FINAL VERSION

27Feb2019... 0385h

19-0677
11/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to certification of devices for the electronic counting of ballots.

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

1 128:1 Electronic Ballot Counting Devices; Approval by the Ballot Law Commission. Amend RSA
2 656:41 to read as follows:

3 656:41 Approval by Ballot Law Commission. The ballot law commission shall act as a board to
4 examine devices for the electronic counting of ballots. The commission shall, whenever requested,
5 examine any device which may be capable of meeting the requirements for elections held in this
6 state *and shall, at least every 5 years, review current and new devices to determine whether*
7 *the devices require upgrading. The commission, after such review, shall file an*
8 *explanatory report with the secretary of state within 30 days of its determination that*
9 *outlines the basis for its determination, taking into account such factors as hardware and*
10 *software standards, policies and procedures, security requirements, and usability.* The
11 commission shall approve ~~such~~ a device *upon request* in its discretion, and no device shall be used
12 in any election in this state unless it reads the voter's choice on a paper ballot and is of a type so
13 approved by the ballot law commission. Any device that is altered must be re-approved before it is
14 used in any election in this state. For the purposes of this section, a device shall be considered
15 altered if any mechanical or electronic part, hardware, software, or programming has been altered.

128:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 25, 2019
Effective Date: August 24, 2019

Amendments

Floor Amendment to HB 345

1 Amend the bill by replacing all after section 1 with the following:

2

3 2 Electronic Ballot Counting Devices; Rules. Amend RSA 656:42, VII to read as follows:

4 VII. Each electronic ballot counting device shall have a *removable* memory [~~card, a metal~~
5 ~~bar covering the inserted memory card, a canvas cover closed by 2 zippers, 2 hard shell covers on~~
6 ~~the front of the device, a hard shell cover on the rear of the device, and 3 communication ports in~~
7 ~~the rear of the device]~~ *device which can be secured in the device with a tamper evident seal*
8 *that will disclose unauthorized access to the hardware and software inside the device.*
9 *Electronic ballot counting devices that are stored in a canvas bag or storage case when*
10 *not in use shall have a bag or case that is capable of being secured with a tamper evident*
11 *seal.*

12 3 Electronic Ballot Counting Devices; Rules. Amend RSA 656:42, VIII(b) and (c) to read as
13 follows:

14 (b) The town or city clerk shall preserve each memory [~~card~~] *device* used at each
15 election until after the recounts for such election are complete and any and all legal challenges to
16 the outcome of that election are adjudicated.

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

19 4 Electronic Ballot Counting Devices; Rules. Amend RSA 656:42, VIII(d)(1)(A)-(C) to read as
20 follows:

21 (A) The connection of the [~~2~~] zippers on the closed canvas cover of the counting
22 *device carrying bag, case, or the device base for devices stored in their bases.*

23 (B) The [~~metal bar in front of the inserted~~] memory [~~card~~] *device.*

24 (C) Electronic ballot counting device housing[~~:~~

25 ~~(i) The seam connecting the 2 hard shell covers on the front of the counting~~
26 ~~device.~~

27 ~~(ii) The seam connecting the hard shell cover on the rear of the counting~~
28 ~~device.~~

29 ~~(iii) The 3 communication ports in the rear of the counting device]~~ *and all*
30 *ports or access points to the device hardware or software, such that the seal(s) would be*
31 *broken if the device is accessed.*

32 5 Electronic Ballot Counting Devices; Rules. Amend RSA 656:42, VIII(d)(7)-(8) to read as

Floor Amendment to HB 345

- Page 2 -

1 follows:

2 (7) Whenever the town or city clerk receives a memory [eard] *device* from the
3 vendor, the clerk shall break the memory [eard] *device* seal, insert the memory [eard] *device* in the
4 electronic ballot counting device, and apply a new seal. The clerk shall lock any *programmed*
5 memory [eard] *device* not inserted into an electronic ballot counting device in a safe and record the
6 names of individuals that have access to such safe on the activity log.

7 (8) Whenever the town or city clerk removes the memory [eard] *device* from the
8 electronic ballot counting device, the clerk shall immediately return it to the memory card
9 programmer *or, if programmed locally, secure the device in a safe* and reseal the ~~[metal bar in~~
10 ~~front of the]~~ empty memory [eard] *device* slot *or port*.

11 6 Electronic Ballot Counting Devices; Rules. Amend RSA 656:42, VIII(e)(10)-(11) to read as
12 follows:

13 (10) The clerk shall test all electronic ballot counting devices and memory [eards]
14 *devices* in the possession of the town or city.

15 (11) Prior to placing the electronic ballot counting device or any memory [eard]
16 *device* into service in an election, the moderator shall certify that there is evidence that pre-
17 election testing was conducted on each electronic ballot counting device and each memory [eard]
18 *device* in the town or city clerk's possession, and that these *ballot counting* devices and [eards]
19 *memory devices* have passed the test.

20 7 New Paragraph; Electronic Ballot Counting Devices; Rules. Amend RSA 656:42 by inserting
21 after paragraph VIII the following new paragraph:

22 IX. Any electronic digital image of a marked ballot made by a ballot counting device,
23 whether stored on the device, on a removable memory device, or on a government computer, shall
24 be non-public and exempt from RSA 91-A.

25 8 New Section; Counting Write-In Votes. Amend RSA 654 by inserting after section 64 the
26 following new section:

27 659:64-a Counting Write-In Votes.

28 I. In a town or city that uses a ballot counting device approved by the ballot law commission
29 pursuant to RSA 656:40 and which prints an image of all write-in votes as part of the device's report
30 of votes cast, a moderator may use the printed images to count write-in votes in place of examining
31 each ballot to obtain the name of the person who received a write-in vote.

32 II. The moderator shall cause all write-in votes, whether viewed on the ballot or on the
33 print out, to be examined for write-in votes that are for a person whose name is printed on the
34 ballot as a candidate. Provided the voter did not overvote for that office, a write-in vote for a person
35 whose name is on the ballot, shall be counted as a vote for that candidate. The moderator shall
36 include that vote in the total of the number of votes cast for that candidate, adding votes by write-in
37 to votes by a marked oval.

Floor Amendment to HB 345

- Page 3 -

1 III. A ballot where the voter marked the oval beside the name of a candidate whose name is
2 printed on the ballot and also wrote that same candidates name in as a write-in shall be counted as
3 one vote for that candidate. The moderator shall include that one vote in the total number of votes
4 cast for that candidate. The write-in shall not be counted separately as a write-in vote.

5 IV. If the moderator shall not use the device report of printed images of write-in votes to
6 fulfill the requirement for publicly announcing all persons receiving votes and the number of votes
7 that person received, the printed images shall be stored for future reference and kept in the
8 possession of the town or city clerk. If write in votes are tallied using the device report, the report
9 shall be marked "name on ballot" or "NOB" beside each write-in vote that was counted as a vote for
10 a candidate whose name was printed on the ballot.

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

16 VI. For all state elections, if used in the ballot counting process, the moderator and the
17 clerk shall retain a copy of the printed images of all write-in votes to be available for reference if
18 needed to resolve questions regarding the return of votes. The copy shall be a non-public document
19 and shall be stored and used in a manner that limits the risk of exposing, through recognition of
20 handwriting, the candidate written in by any voter.

21 9 Effective Date. This act shall take effect 60 days after its passage.

Floor Amendment to HB 345
- Page 4 -

2019-1899s

AMENDED ANALYSIS

This bill requires the ballot law commission to approve a new secure electronic ballot counting device at regular intervals. This bill also modifies the rules relative to electronic ballot counting devices and clarifies counting procedures for write-in votes counted by electronic ballot counting devices.

Committee Minutes

AMENDED
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: April 17, 2019

HEARINGS

Wednesday	04/24/2019	
(Day)	(Date)	
Election Law and Municipal Affairs	LOB 102	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m.	EXECUTIVE SESSION ON PENDING LEGISLATION	
10:00 a.m.	HB 345	relative to certification of devices for the electronic counting of ballots.
10:15 a.m.	HB 452	establishing a commission on the first-in-the-nation presidential primary.
10:30 a.m.	HB 479-FN	relative to eligibility for the low and moderate income homeowners property tax relief.
10:45 a.m.	HB 611-FN	allowing voters to vote by absentee ballot.
11:15 a.m.	HB 443	relative to municipal watering restrictions.
11:30 a.m.	HB 651	allowing the use of campaign funds for child care expenses.

Sponsors:

HB 452

Rep. Cushing

Rep. Wallner

Rep. Baldasaro

HB 479-FN

Rep. Fellows

Rep. Gordon

Rep. Ames

Rep. Ellison

Rep. Weston

HB 611-FN

Rep. Rogers

Rep. W. Pearson

HB 443

Rep. McBeath

Rep. Van Houten

HB 651

Rep. Loughman

Rep. Wazir

Rep. Griffith

Rep. Josephson

Rep. Wilhelm

Rep. K. Murray

HB 345

Rep. Long

Rep. Bergeron

Tricia Melillo 271-3077

Melanie Levesque
Chairman

report about whether the machines are certified in New Hampshire or not. He has confidence that there is a good dialogue between those that use the device and the ballot law commission.

- Senator Sherman asked if this is a decision with the Secretary of State's office. Representative Bergeron responded no, it is with the ballot law commission.
- Senator Levesque asked how the Secretary of State's office would be alerted when there is a problem or to ensure they are reviewed every five years. Representative Bergeron responded that he is certain that they will be reviewed, and the clerks are very vocal when problems arise. He would anticipate that the Secretary of State would have the conversation with the election officials.
- Senator Gray asked if this is different than what is currently in law. Representative Bergeron responded yes. Vendor and town officials can approach the ballot law commission. A lot do not come forward though because it is not feasible.
- Senator Gray asked if this does not do any good unless section two is done. Representative Bergeron responded yes, a lot of these laws are specific only to the AcuVote machine.

Summary of testimony presented in opposition: None

Neutral Information Presented:

David Scanlan, Deputy Secretary of State

- Representative Bergeron accurately portrayed the approval of new machines.
- The Secretary of State's office has attempted to have vendors come forward with their machines and begin the certification with the ballot law commission.
- They have been reviewing the vendors and he expects in the next couple of weeks they will have answers to bring to the ballot law commission.
- Senator Sherman asked if the Secretary of State's office is okay with this bill. Mr. Scanlan responded yes, it is appropriate.
- Senator Sherman asked if the statute needs to be changed for the office to look at new vendors. Mr. Scanlan responded that this bill is calling for a regular review of what is on the market. There is another bill that will take steps to change the laws to accommodate a new vendor.
- Senator Levesque asked what the process is now to identify what machines need to be upgraded or replaced. Mr. Scanlan responded that right now the only device that is approved in New Hampshire is the AcuVote machine. They receive regular reports from the vendor about updates that have been done and anybody can approach the ballot law commission to ask for a new device to be approved.
- Senator Levesque asked if HAVA funds are available to help pay for these. Mr. Scanlan responded no, the municipalities pay for the machines themselves. He does not believe HAVA dollars would be available because those funds are only to be used for new programs.
- Senator Levesque asked if the machines that are coming out now are less expensive, faster and better. Mr. Scanlan responded yes, the devices today are better and using new technology and software. There is a concern about the security due to the new capabilities. In regard to cost, the machines are about the same cost as the AcuVote machines. But the cost of maintenance for the machines is unknown.
- Senator Gray asked if there should be an amendment to take the AcuVote machine out of SB 283. Mr. Scanlan answered that it would make it easier to address the issues.
- Senator Levesque asked if he had the costs of the vendors they have seen thus far. Mr. Scanlan responded that he will have that information in a couple of weeks.

TM

Date Hearing Report completed: April 26, 2019

Speakers

Voting Sheets

Senate Election Law & Municipal Affairs Committee

EXECUTIVE SESSION RECORD

2019 Session

Bill # **HB 345**

Hearing date: 4/24/19

Executive Session date: 5/9/19

Motion of: OTP Vote: 3-1

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 checked="" 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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gray	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Motion of: _____ Vote: _____

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

Motion of: _____ Vote: _____

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

Reported out by: Sen. M.

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Thursday, May 9, 2019

THE COMMITTEE ON Election Law and Municipal Affairs

to which was referred **HB 345**

AN ACT

relative to certification of devices for the electronic
counting of ballots.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 3-1

Senator Jon Morgan
For the Committee

Tricia Melillo 271-3077

Docket of HB345

Docket Abbreviations

Bill Title: relative to certification of devices for the electronic counting of ballots.*Official Docket of HB345.:*

Date	Body	Description
12/31/2018	H	Introduced 01/02/2019 and referred to Election Law HJ 2 P. 46
1/3/2019	H	Public Hearing: 01/10/2019 10:00 am LOB 305-307
1/29/2019	H	==RECESSED== Executive Session: 02/06/2019 10:00 am LOB 308
2/6/2019	H	==CONTINUED== Executive Session: 02/12/2019 11:00 am LOB 308
2/20/2019	H	Committee Report: Ought to Pass with Amendment #2019-0385h for 02/27/2019 (Vote 20-0; CC) HC 13 P. 6
2/27/2019	H	Amendment #2019-0385h : AA VV 02/27/2019 HJ 6 P. 8
2/27/2019	H	Ought to Pass with Amendment 2019-0385h: MA VV 02/27/2019 HJ 6 P. 8
3/18/2019	S	Introduced 03/14/2019 and Referred to Election Law and Municipal Affairs; SJ 9
4/18/2019	S	Hearing: 04/24/2019, Room 102, LOB, 10:00 am; SC 19
5/9/2019	S	Committee Report: Ought to Pass, 05/15/2019; SC 22
5/15/2019	S	Sen. Gray Floor Amendment #2019-1899s , AF, VV; 05/15/2019; SJ 16
5/15/2019	S	Ought to Pass: MA, VV; OT3rdg; 05/15/2019; SJ 16
5/31/2019	S	Enrolled (In recess 05/30/2019); SJ 19
5/31/2019	H	Enrolled 05/23/2019 HJ 16 P. 51
6/27/2019	H	Signed by Governor Sununu 06/25/2019; Chapter 128; Eff: 08/24/2019

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 345

Senate Committee: Exec. 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 # ___ ___ - amendment # ___

___ - 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 # 1899 ___ - 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