

**CONSENT CALENDAR**

**April 14, 2022**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Election Law to which was referred  
SB 366-FN,**

**AN ACT requiring an audit of ballots cast in the 2022  
primary and general election. Having considered the  
same, report the same with the following amendment,  
and the recommendation that the bill OUGHT TO PASS  
WITH AMENDMENT.**

**Rep. Katherine Prudhomme-O'Brien**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>Election Law</b>
Bill Number:	<b>SB 366-FN</b>
Title:	<b>requiring an audit of ballots cast in the 2022 primary and general election.</b>
Date:	<b>April 14, 2022</b>
Consent Calendar:	<b>CONSENT</b>
Recommendation:	<b>OUGHT TO PASS WITH AMENDMENT 202201408h</b>

### STATEMENT OF INTENT

This bill as amended requires the Secretary of State to conduct a preliminary audit of the tabulation done in two voting districts by the AccuVote electronic ballot counting devices in the 2022 State Primary Election. If the process proves feasible, he shall expand the audit in the State General Election to four randomly selected voting districts. The public will be allowed to observe the audit. The voting districts chosen will be selected after the AccuVote memory cards are programmed for all voting districts and will be announced after noon on election day. Audit results will be announced before noon on the Friday after election day. This bipartisan bill aims to enhance voter confidence in New Hampshire elections.

Vote 20-0.

Rep. Katherine Prudhomme-O'Brien  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

Election Law

**SB 366-FN**, requiring an audit of ballots cast in the 2022 primary and general election. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Katherine Prudhomme-O'Brien for Election Law. This bill as amended requires the Secretary of State to conduct a preliminary audit of the tabulation done in two voting districts by the AccuVote electronic ballot counting devices in the 2022 State Primary Election. If the process proves feasible, he shall expand the audit in the State General Election to four randomly selected voting districts. The public will be allowed to observe the audit. The voting districts chosen will be selected after the AccuVote memory cards are programmed for all voting districts and will be announced after noon on election day. Audit results will be announced before noon on the Friday after election day. This bipartisan bill aims to enhance voter confidence in New Hampshire elections. **Vote 20-0.**

Original: House Clerk

Cc: Committee Bill File

Amendment to SB 366-FN

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

2

3 1 Audit Authorized. The secretary of state is hereby authorized to conduct an audit of the  
4 AccuVote electronic ballot counting devices used in the 2022 state primary and general elections.

5

6 Amend the bill by replacing section 3 with the following:

7

8 3 Preliminary Audit; State Primary Election. The secretary of state shall conduct an audit of all  
9 AccuVote devices used in at least 2 voting districts in the 2022 state primary election. The devices  
10 need not be selected at random. The intent of this audit is to identify problems with process to be  
11 used in the state general election audit. If the secretary of state is unable to resolve problems  
12 detected during the audit of the primary election, he or she may elect to forego the general election  
13 audit. If the secretary of state decides to forego the general election audit, he or she shall  
14 communicate his or her decision to the senate president, the speaker of the house of representatives,  
15 the chairperson of the senate election law and municipal affairs committee, and the chairperson of  
16 the house election law committee within 10 days from the date of the primary election.

17

18 Amend the bill by replacing section 4 with the following:

19

20 4 State General Election Audit; 2022.

21 I. The secretary of state shall randomly select not less than 4 voting districts that used  
22 AccuVote devices at the 2022 state general election to be audited. The secretary of state may divide  
23 districts into groups for the selection based on criteria such as the estimated number of election day  
24 ballots to be processed. The selection of districts to be audited shall be non-public and made at least  
25 2 weeks prior to the general election, after the AccuVote memory cards have been programmed.

26 II. The secretary of state shall not announce which districts have been selected to be audited  
27 until at least 12:00 p.m. on election day.

28 III. The audit team shall consist of at least 2 individuals appointed by the secretary of state.  
29 One such individual shall have been trained by the secretary of state in the audit process and the  
30 use of audit equipment. The other individual, if not trained by the secretary of state in the audit  
31 process and the use of audit equipment, shall be an elected election official. The audit team shall

**Amendment to SB 366-FN**

**- Page 2 -**

1 scan all of the ballots which were cast and processed by the AccuVote machines in the selected  
2 districts.

3 IV. The audit shall be open to the public but no one except audit team members shall be  
4 allowed to touch any ballot or any of the audit equipment.

5 V. Results from the scanning of the ballots shall be announced by the audit team at the  
6 conclusion of the district audit.

7 VI. A random sample of not less than 5 percent of the ballots scanned shall be selected and  
8 the images of the ballots selected shall be compared with the voters' choices recorded for the ballot.  
9 Any differences identified during the comparison shall be documented.

10 VII. The secretary of state shall make the results of the audits available prior to 12:00 p.m.  
11 on the Friday after the election. The secretary shall also report the results to the ballot law  
12 commission, and the chairs of the house of representatives and senate standing committees with  
13 jurisdiction over election law.

**HOUSE COMMITTEE ON ELECTION LAW**

**EXECUTIVE SESSION on SB 366-FN**

**BILL TITLE:** requiring an audit of ballots cast in the 2022 primary and general election.

**DATE:** April 13, 2022

**LOB ROOM:** 306 - 308

**MOTIONS: OUGHT TO PASS WITH AMENDMENT**

Moved by Rep. Bergeron

Seconded by Rep. Ward

AM Vote: 20-0

Amendment # 2022-1408h

Moved by Rep. Prudhomme-O'Brien Seconded by Rep. Torosian

Vote: 20-0

**CONSENT CALENDAR: YES**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Natalie Wells, Clerk



2021 SESSION

Election Law

Bill #: SB366FN Motion: OTPLA AM #: \_\_\_\_\_ Exec Session Date: 4-13-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Griffin, Barbara J. Chairman	✓		
MacDonald, Wayne D. Vice Chairman	✓		
Prudhomme-O'Brien, Katherine J.	✓		
Sweeney, Joe	✓		
<del>Hayward, Peter T.</del> <u>Bob Healey</u>	✓		
<del>Mooney, Maureen C.</del> <u>Alexander</u>	✓		
Torosian, Peter E.	✓		
Berry, Ross	✓		
<del>Green, Fenton</del> <u>Matthew Simon</u>	✓		
Qualey, James R.	✓		
Wells, Natalie J. Clerk	✓		
<del>Cote, David E.</del> <u>Bill Marsh</u>	✓		
Ward, Gerald W.R.	✓		
Bergeron, Paul R.	✓		
Sandler, Catt	✓		
<del>Hamer, Heidi M.</del> <u>M Perez</u> , <del>Hamer</del>	✓		
Lane, Connie B.	✓		
Freitas, Mary C.	✓		
Hamblet, Joan L.	✓		
<del>Muirhead, Russell</del> <u>Jerry Merchant</u>	✓		
<b>TOTAL VOTE:</b>	<u>20</u>	<u>0</u>	



2021 SESSION

Election Law

Bill #: SB366FN Motion: OTP AM #: 2022-1408 Exec Session Date: 4-13-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Griffin, Barbara J. Chairman	✓		
MacDonald, Wayne D. Vice Chairman	✓		
Prudhomme-O'Brien, Katherine J.	✓		
Sweeney, Joe	✓		
<del>Hayward, Peter T.</del> <u>Bob Healey</u>	✓		
<del>Mooney, Maureen C.</del> <u>Alexander</u>	✓		
Torosian, Peter E.	✓		
Berry, Ross	✓		
<del>Green, Fenton</del> <u>Matthew Simon</u>	✓		
Qualey, James R.	✓		
Wells, Natalie J. Clerk	✓		
<del>Cote, David E.</del> <u>Bill Marsh</u>	✓		
Ward, Gerald W.R.	✓		
Bergeron, Paul R.	✓		
Sandler, Catt	✓		
<del>Hamer, Heidi T.</del> <u>Perez</u> <del>HAMER</del>	✓		
Lane, Connie B.	✓		
Freitas, Mary C.	✓		
Hamblet, Joan L.	✓		
<del>Murhead, Russell</del> <u>Gary Merchant</u>	✓		
<b>TOTAL VOTE:</b>	<u>20</u>	<u>0</u>	



HOUSE COMMITTEE ON ELECTION LAW

PUBLIC HEARING ON SB 366-FN

**BILL TITLE:** requiring an audit of ballots cast in the 2022 primary and general election.

**DATE:** April 6, 2022

**LOB ROOM:** 306

**Time Public Hearing Called to Order:** 11:00am

**Time Adjourned:** 11:15am

**Committee Members:** Reps. B. Griffin, W. MacDonald, Wells, Prudhomme-O'Brien, Sweeney, Hayward, Torosian, Berry, Groen, Qualey, Alexander Jr., Cote, Ward, Bergeron, Sandler, Hamer, Lane, Freitas, Hamblet and Muirhead

**Bill Sponsors:**

Sen. Gray

Sen. Soucy

Sen. Birdsell

Rep. Baroody

**TESTIMONY**

\* Use asterisk if written testimony and/or amendments are submitted.

**Carole Alfano (Senate Communications) for Senator James Gray**

**Rep. Bergeron**

- Question: This is testing of ACCU Vote Machines vs. Audits, not towns with paper ballots?

**Patricia Lovejoy - Deputy Sr. SOS**

- Bill attempts regarding voter's concern. It is not audit, its looking only at one machine. Testing that one machine in a town, no more than 4 devices.
- If they have more than ne machine, towns are not notified which machine. Need to make sure all ballots are "What Box it comes in.
- Side bins Provide ballots hand counted end day, not included when Boxing up ballots that these are not counted.
- Election ends on Tuesday, SOS would get results. Audits high speed scanner.
- Ballots brought to Archiver.
- My personal thought - what we're trying to achieve - if we're trying to prove, Accu-Machines accurate but maybe done potentially after recounts.
- But for House-Senate - Governor decides. Time crunch getting this done to Friday am.

**Rep. Bergeron**

- There are places who use 2 machines. If (they) keep ballots segregated from this, person accidentally put in wrong box - wouldn't it make sense both machines checked to feel confident?
- Answer: That would be a recount, you'd also have possibly hand count not issue from different machines. Towns not used to keeping them separate.
- It could do opposite of what bill is intended to do.

**Rep. Hayward**

- Question: Are you not missing important information from side pocket or accuracy of count but rejected by machine, theres data?
- Answer: Purpose of Bill is to just do accuracy of machine. Side pocket would not be concerned. Just accuracy of ACCU.Machine.

**Rep. Qualey**

- Question: Part IV SOS randomly select.- How many ACCU vote devices do we have, a number?
- Answer: At least 150 machines being used.

**Alvin See**

- I was at Senate hearing and study commissions.
- I'm in favor of this bill

**Respectfully Submitted,**

**Rep. Natalie Wells, Clerk**



# House Remote Testify

## Election Law Committee Testify List for Bill SB366 on 2022-04-06

Support: 76 Oppose: 0 Neutral: 0 Total to Testify: 0

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Birdsell, Senator Regina	Hampstead, NH regina.birdsell@leg.state.nh.us	An Elected Official	Senate District 19	Support	No	No	3/31/2022 8:09 AM
Soucy, Donna	Manchester, NH donna.soucy@leg.state.nh.us	An Elected Official	SD 18	Support	No	No	4/1/2022 4:19 PM
Manseau, Joline	Hollis, NH joline.manseau@gmail.com	A Member of the Public	Myself	Support	No	No	4/2/2022 9:35 PM
MacGregor, Leslie	Grantham, NH lsmacgregor@gmail.com	A Member of the Public	Myself	Support	No	No	4/3/2022 11:27 AM
Winslow, Dalton	Grantham, NH dwinslow04736@gmail.com	A Member of the Public	Myself	Support	No	No	4/3/2022 11:32 AM
Hatcher, Phil	Dover, NH phil.hatcher@gmail.com	A Member of the Public	Myself	Support	No	No	4/3/2022 4:48 PM
Damon, Claudia	Concord, NH cordsdamon@gmail.com	A Member of the Public	Myself	Support	No	No	4/3/2022 9:33 PM
Nelson, Elizabeth	Derry, NH BethDavid@comcast.net	A Member of the Public	Myself	Support	No	No	4/3/2022 9:37 PM
Reed, Barbara	North Swanzey, NH BDRreed74@gmail.com	A Member of the Public	Myself	Support	No	No	4/3/2022 10:58 PM
Fudge, Kim Marie	NORTH CONWAY, NH kimfudge20@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 6:34 AM
FRIEDRICH, ED	Loudon, NH erfriedrich@yahoo.com	A Member of the Public	Myself	Support	No	No	4/4/2022 8:26 AM
thompson, julia	durham, NH maple371@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 8:31 AM
Ellermann, Maureen	Concord, NH ellermannf@aol.com	A Member of the Public	Myself	Support	No	No	4/4/2022 8:33 AM

Jones, Andrew	Pembroke, NH arj11718@yahoo.com	A Member of the Public	Myself	Support	No	No	4/4/2022 8:57 AM
Devore, Gary	Pembroke, NH torin_asheron@yahoo.com	A Member of the Public	Myself	Support	No	No	4/4/2022 8:57 AM
Rettew, Annie	Concord, NH abrettew@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 9:29 AM
Corell, Elizabeth	Concord, NH Elizabeth.j.corell@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 12:55 PM
Verschueren, James	Dover, NH jd.verschueren@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 2:06 PM
Torpey, Jeanne	Concord, NH jtorp51@comcast.net	A Member of the Public	Myself	Support	No	No	4/4/2022 2:51 PM
Gray, James	Rochester, NH James.Gray@leg.state.nh.us	An Elected Official	Sen. James Gray SD 6	Support	No	No	4/4/2022 2:55 PM
Brennan, Nancy	Weare, NH burningnan14@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 3:16 PM
Jakubowski, Deborah	Loudon, NH Dendeb146@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 3:42 PM
Thomas, Anne	Rindge, NH annethomasjazz@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 4:21 PM
Hershey, Jane	Rindge, NH janelhershey@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 4:22 PM
Martin, Patricia A	Rindge, NH pmartin2894@yahoo.com	A Member of the Public	Myself	Support	No	No	4/4/2022 4:22 PM
Merlone, Lynn	Rindge, NH prulone@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 4:22 PM
Walent, Sandra	Portsmouth, NH snwalent@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 4:24 PM
Chase, Kristan	Windham, NH 4kristanchase@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 4:25 PM
Davis, Tod	Nashua, NH todc.18@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 4:35 PM
Wilson, Kathy	Goffstown, NH home.wilson@comcast.net	A Member of the Public	Myself	Support	No	No	4/4/2022 4:45 PM
Levesque, Cassandra	Barrington, NH cassandra.levesque@leg.state.nh.us	An Elected Official	Myself	Support	No	No	4/4/2022 4:46 PM

Moccia, Lianne	LEBANON, NH lianne.moccia@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 4:56 PM
Hamer, Geoff	Manchester, NH Geoffh87@aol.com	A Member of the Public	Myself	Support	No	Yes	4/4/2022 5:22 PM
Zajano, Nancy	Exeter, NH Nanczajano@aol.com	A Member of the Public	Myself	Support	No	No	4/4/2022 5:33 PM
Moore, Susan	Franconia, NH susan.moore.franconia@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 5:36 PM
Zajano, Emily	Exeter, NH emzajano@aol.com	A Member of the Public	Myself	Support	No	No	4/4/2022 5:54 PM
Lynch, Chrisinda	Concord, NH cmmelynch@comcast.net	A Member of the Public	Myself	Support	No	No	4/4/2022 5:55 PM
Malsbenden, Kathleen	Newmarket, NH Kmalsbenden@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 6:22 PM
Alessi, Kelly	Litchfield, NH klrussell17@yahoo.com	A Member of the Public	Myself	Support	No	No	4/4/2022 6:25 PM
BURLINGAME, TERRY	GILMANTON IRON WORKS, NH mexicananh@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 6:27 PM
Broshek, Mary	ANDOVER, NH mabandsadie@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 7:03 PM
Christie, Katharine	Etna, NH kschristie2@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 7:11 PM
Selig, Loren	DURHAM, NH zltselig@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 9:14 PM
Brown, Jean	Hanover, NH jean.e.brown1@gmail.com	A Member of the Public	Myself	Support	No	No	4/4/2022 10:26 PM
Mooney, Bridget	Wilton, NH bridget@moonchick.com	A Member of the Public	Myself	Support	No	No	4/4/2022 10:57 PM
Ahlgren, Jessie	Sanbornton, NH jessiebahlgren@gmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 7:46 AM
Anderson, Sara	Dunbarton, NH sara.dunbarton.dems@gmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 7:46 AM
Hatch, Sally	Concord, NH sallyhatch@comcast.com	A Member of the Public	Myself	Support	No	No	4/5/2022 8:14 AM
Fogarty, Sean	Exeter, NH seanf186@gmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 8:25 AM



Malmberg, Jane	Walpole, NH jamalmberg033@gmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 8:29 AM
Dodge, Corinne	Derry, NH corinnedodge@hotmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 8:40 AM
Kelley-Gillard, Nancy	Keene, NH ndgillard@ne.rr.com	A Member of the Public	Myself	Support	No	No	4/5/2022 9:01 AM
Berk, Bruce	Pittsfield, NH bruce.berk.nh@gmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 10:30 AM
E Low, Sarah	Newmarket, NH sarahelow1@gmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 10:41 AM
Greenwood-Briggs, Sabrina	Concord, NH Sabrinagb@gmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 12:42 PM
Newick, Catharine	Canterbury, NH csnewick@gmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 1:36 PM
Alessi, Chuck	Litchfield, NH carthur72@gmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 2:44 PM
Allyn, Cathy	New Durham, NH prosody@hotmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 3:07 PM
Covert, Susan	Contoocook, NH scovert@comcast.net	A Member of the Public	Myself	Support	No	No	4/5/2022 4:58 PM
Moore, Ellen	Danville, NH elliemore@comcast.net	A Member of the Public	Myself	Support	No	No	4/5/2022 5:23 PM
Schapira, Carol	Hopkinton, NH Carolschapira@me.com	A Member of the Public	Myself	Support	No	No	4/5/2022 5:36 PM
Walsh, Lynne	Melvin Village, NH lynnwalsh14@gmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 5:44 PM
Cann, Emily	Sanbornton, NH emily_cann@hotmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 6:44 PM
Terwilliger, Linda	Gilford, NH lindaterwilliger364@gmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 7:34 PM
Clafin, Kyri	Concord, NH Kyriclafin@comcast.net	A Member of the Public	Myself	Support	No	No	4/5/2022 8:30 PM
Spencer, Louise	Concord, NH kentstusa@aol.com	A Member of the Public	Myself	Support	No	No	4/5/2022 9:35 PM
perencevich, ruth	concord, NH rperence@comcast.net	A Member of the Public	Myself	Support	No	No	4/5/2022 10:17 PM

Richman, Susan	Durham, NH susan7richman@gmail.com	A Member of the Public	Myself	Support	No	No	4/5/2022 11:04 PM
Willing, Maura	Concord, NH Maura.Willing@Comcast.net	A Member of the Public	Myself	Support	No	No	4/6/2022 7:56 AM
Hodsdon, Alan	CANTERBURY, NH alan.hodsdon@gmail.com	A Member of the Public	Myself	Support	No	No	4/6/2022 8:55 AM
Kenison, Pamela	Concord, NH pkkenison@gmail.com	A Member of the Public	Myself	Support	No	No	4/6/2022 10:35 AM
Holtz, Anthony	Dover, NH awave28@live.com	A Member of the Public	Myself	Support	No	No	4/6/2022 11:06 AM
Nastasi, Sue	Rollinsford, NH ctcoastmetro@gmail.com	A Member of the Public	Myself	Support	No	No	4/6/2022 11:59 AM
Coon, Kate	Peterborough, NH kate2coon@gmail.com	A Member of the Public	Myself	Support	No	No	4/6/2022 8:12 PM
Holt, David	Somersworth, NH davholt@aol.com	A Member of the Public	Myself	Support	No	No	4/6/2022 9:17 PM
Istel, Claudia	Acworth, NH cistel79@gmail.com	A Member of the Public	Myself	Support	No	No	4/6/2022 11:49 PM



**Archived:** Wednesday, May 18, 2022 10:19:03 AM  
**From:** Wayne MacDonald  
**Sent:** Monday, January 24, 2022 9:13:08 AM  
**To:** Judy Aron  
**Cc:** ~House Election Law Committee  
**Subject:** Re: FW: Election Transparency: Your Bill, HB 1522  
**Importance:** Normal

---

Thanks Judy.

On Jan 23, 2022 11:58 AM, Judy Aron <Judy.Aron@leg.state.nh.us> wrote:  
Sharing with you.

Thank you,

Judy Aron  
NH State Representative  
Sullivan County District 7  
Acworth, Goshen. Langdon, Lempster, Washington  
266 Forest Rd., South Acworth, NH 03607  
603-843-5908

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Deborah Sumner <dsumner@myfairpoint.net>  
Date: 1/23/22 9:41 AM (GMT-05:00)  
To: Patrick Abrami <Patrick.Abrami@leg.state.nh.us>, Judy Aron <Judy.Aron@leg.state.nh.us>, Max Abramson <Max.Abramson@leg.state.nh.us>, tomlanzara@gmail.com  
Cc: Ellen Read <Ellen.Read@leg.state.nh.us>, ken Eyring <ken@intrinetsystems.com>, Mary Till <maryforderry@yahoo.com>  
Subject: Election Transparency: Your Bill, HB 1522

Dear legislators,

Didn't see the bill's text until after the hearing, but wanted to let you know about two amendments I proposed to SB 366 in testimony on that bill.

Your bill, Section 14 says: 14 Electronic Ballot Counting Devices; Rules. Amend RSA 656:42, IX to read as follows:

IX. Any electronic digital image of a marked ballot made by a ballot counting device, [ ~~whether stored on the device, on a removable memory device, or on a government computer, shall be non public and exempt from RSA 91-A~~ ] ***shall be made accessible to every citizen through digital imaging made public by every city or town within 8 hours of the close of the polls . Citizens shall be able to perform a "citizen's audit" to tie the counts in the official records to the ballot images. Citizens shall be informed at the time of casting ballots that digital copies of the ballots will be preserved and made public to protect any concerns over privacy.***

Hope you can find some way to make sure this change happens this year. FYI, VT ballots look just like ours (AccuVote computer and some hand count towns). Ballots and ballot images are public records there. In NH, the legislature exempted ballots at the request of then Deputy SoS Scanlan and then-assistant AG Fitch in 2003 and images at the request of the SoS in 2020 (I believe).

Not sure I agree with the TIMING of the release...I'd prefer waiting until after the recount period has ended. There is a legal process that should be completed first before the public has access. Candidates have recourse through the courts if evidence of a flawed election is found.

Am including Rep. Read and two others who are working on election transparency issues. I'm not speaking for any of them.

Thank you for representing the public's interest in election transparency!

Deborah Sumner  
474A Great Rd.  
Jaffrey, NH 03452  
603-532-8010

**Two Requested Amendments:** (to SB 366)

1) Ballot Images accessible to the public, changes needed in current law

**Legal standard for exempting public records for privacy reasons:**

- i. Is there a privacy interest at stake that would be invaded by the disclosure?
- ii. Would disclosure inform the public about the conduct and activities of its government?
- iii. Balance the public interest in disclosure against the government's interest in non-disclosure and the individual's privacy interest in non-disclosure .

If the SoS tells you handwriting MAY be traceable to voters, suggest ballot directions instruct voters to print write in choices.

Good article re: GA ballot images as public records here:

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

Green section shows an error. Law was passed, but these sections were not in current law! when I last checked. **Repeal was SUPPOSED to be for RSA 656:45** relative to testing of equipment to conduct post-election audit of electronic ballot counting devices, is repealed.

**659:64-a Repealed by 2020, 23:9, eff. Nov. 1, 2020. –**

<http://www.gencourt.state.nh.us/rsa/html/LXIII/659/659-64-a.htm>

23:8 New Section; Counting Write-In Votes. Amend RSA 654 by inserting after section 64 the following new section:

Amend 659:64-a Counting Write-In Votes to read as follows:

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

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

2) Ballot Image retention, consistent with paper counterparts (See July 28, 2021 guidance from the USDOJ)

Electronic records (ballot images and cast vote records) that include a federal contest have to be retained for 22 months, municipal elections 60 days.

**The Civil Rights Act of 1960, now codified at 52 U.S.C. §§ 20701-20706, governs certain “[f]ederal election records.” Section 301 of the Act requires state and local election officials to “retain and preserve” all records relating to any “act requisite to voting” for twenty-two months after the conduct of “any general, special, or primary election” at which citizens vote for “President, Vice President, presidential elector, Member of the Senate, [or] Member of the House of Representatives,” 52 U.S.C. § 20701. The materials covered by Section 301 extend beyond “papers” to include other “records.” Jurisdictions must therefore also retain and preserve records created in digital or electronic form.”**

<https://www.justice.gov/opa/press-release/file/1417796/download>

Here are links to NH law which would require that retention:

RSA 33-A:33-a, XXXVI requires ballots including a federal election to be retained for 22 months, XXVII others for 60 days.

<http://www.gencourt.state.nh.us/rsa/html/III/33-A/33-A-3-a.htm>

RSA 91-A:4 III-a says:

<http://www.gencourt.state.nh.us/rsa/html/VI/91-A/91-A-mrg.htm>

III-a. Governmental records created or maintained in electronic form shall be kept and maintained for the same retention or archival periods as their paper counterparts. Governmental records in electronic form kept and maintained beyond the applicable retention or archival period shall remain accessible and available in accordance with RSA 91-A:4, III. Methods that may be used to keep and maintain governmental records in electronic form may include, but are not limited to, copying to microfilm or paper or to durable electronic media using standard or common file formats....

**Archived:** Wednesday, May 18, 2022 10:18:41 AM  
**From:** Deborah Sumner  
**Sent:** Thursday, April 7, 2022 10:35:57 AM  
**To:** ~House Election Law Committee  
**Subject:** Oppose SB 366, Request Amendments  
**Importance:** Normal

---

### Oppose SB 366-FN, April 6, 2022

Dear Honorable Members of the House Election Law Committee (with apology for sending this after the hearing),

One problem in our elections is that our laws and constitution require public controls, transparency and public accountability. Computer counting violates those constitutional values.

Another is that the Secretary of State “creatively” interprets election laws and the attorney general goes along. If the SoS says “2+2=5” most legislators act as though they agree with his math. As a former teacher, I would encourage him to check his work so he can find his mistakes and stop making the same ones.

In his testimony opposing SB 79 (trust but verify bill) last year, Mr. Scanlan estimated 2-3% of legal votes are not “counted” by the AccuVote on election night. He has no estimate for lost votes in hand count towns. Restoring public controls at the local level will protect voting rights, votes and our elections.

SB 366 doesn’t address either problem or move us toward the day we will all have reason to trust and be proud of our elections. Sadly, based on my experience since 2010, I believe it will make the problems worse and public trust less likely.

SB 366 proposes spending \$50,000 to \$100,000 to try this approach. I believe we can solve both problems, and protect votes and elections for much less.

That’s what the attached proposal will do. I invite you, your house colleagues and town moderators and clerks you know to join us in improving this draft. We hope to finalize legislation to introduce next year.

Since I expect your proposal will pass, please consider two amendments re: ballot images I’ve added at the end.

I ask that this written testimony be included in legislative history for this bill.

Thank you.

Respectfully,  
Deborah Sumner  
474A Great Rd.  
Jaffrey, NH 03452  
603-532-8010

PS I will forward the Dec. 2020 and Feb. 7, 2022 request of the attorney general to investigate the high number of over voted ballots in Derry in the Nov. 2020 election. Please petition the AG to

conduct this investigation before Sept. 2022 and report his finding to the legislature and public. My understanding is that he can ask the FBI or the county attorney to help.

## Two Requested Amendments:

### 1) Ballot Images accessible to the public, changes needed in current law

#### **Legal standard for exempting public records for privacy reasons:**

- i. Is there a privacy interest at stake that would be invaded by the disclosure?
- ii. Would disclosure inform the public about the conduct and activities of its government?
- iii. Balance the public interest in disclosure against the government's interest in non-disclosure and the individual's privacy interest in non-disclosure .

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

**2) Ballot Image retention, consistent with paper counterparts (See July 28, 2021 guidance from the USDOJ)**

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## **Post-Election Audit for NH: A Proposal**

- Goals:**
1. NH elections we all have reason to trust and be proud of.
  2. Must pass constitutional muster: Local responsibility, publicly accountable for accurate vote counts as NH laws require.<sup>1</sup>
  3. Aim for continuing improvements in election procedures/processes and verifiable accuracy of voters' intent.
  4. Support cooperative spirit among state, local election officials and members of the public.
  5. Honesty and truth telling become the norm.

### **Purpose of post-election audit:**

1. That all votes are counted, tabulated, and reported accurately (voter intent legal standard) and with complete transparency.
2. The results are based on evidence, not faith.
3. Reveals needed improvements and follow up.

### **Problem with use of high speed scanner for post-election audit:**

Currently, a private corporation that is not accountable to voters tabulates more than 90% of NH votes. The solution is NOT another corporation that isn't accountable to voters checking the first one's work. See end for why RLAs are impossible for ordinary citizens (and many election officials and policy makers to understand). FACT: People don't trust what they can't understand or verify. <sup>2</sup>

**Solution:** Will allow responsible use of technology, with checks and balances, while fostering this attitude at both the local and state level. "The most important job in a democracy is to carefully count your neighbor's vote." Walter Holland, Lyndeborough town moderator.

"Election integrity is not built on trust, but on a transparent process. It's not incumbent on the voter to put blind faith in the accuracy of computers and the good will of election officials and poll workers...it's on the government to prove itself to the citizens." Mary Till, former Derry town moderator

"A decision [about who was elected] cannot be rendered without evidence, nor in disregard of settled rules of law." Broderick v. Hunt, 77 N.H. 143 (1913)

Consider developing CT "audit station" approach, which could fulfill NH constitutional and legal requirements. (See pp. 35- 43.)<sup>3</sup>

### **Framework for policy makers to consider:**

**Guiding Principle:** "Ballot counting accuracy, security and credibility are essential for a democracy to function. Ongoing efforts to test accuracy and maintain security for tabulators and paper ballots must be supported by the cities and towns responsible for counting ballots in elections. **The primary cost of tabulator testing**



and security must be borne by the towns and cities. If towns or cities are unwilling or unable to make such commitments, the alternative is hand counting.”<sup>4</sup> (HAVA and/or state money should be made available to towns and cities to conduct post-election audits.) As of Sept. 20, 2020, more than \$11 million of HAVA funds available.<sup>5</sup>

**Specifics:**

1. SB 79 codified into law. AN ACT relative to the authority of the moderator to verify the device count.<sup>6</sup>

2. HB 1390, section enabling citizens to petition for election night check codified.<sup>7</sup>

3. Automatic hand recount for any race with winning margin 0.5% or less at state expense (or using HAVA funds). Announced based on preliminary results day after election.

4. Needs to be determined: Size of audit sample (in other states, audit sample size ranges from less than 1% of jurisdictions to 5%).

Should include at least two jurisdictions with “larger number of voters” and one hand count town. (Analysis has shown that tampering is more likely to occur in larger jurisdictions where it is less noticeable.)<sup>8</sup> Recruit expert in statistics to help determine size of sample and defining which jurisdictions include “larger number of voters.”

5. **WHEN** selected? No later than 48 hours after election.

6. **WHEN** is audit done/completed? Begun no later than 2 days after jurisdictions are selected. Both MA and CT allow at least two weeks for the audit results to be reported to the state. The NH timeline, which now requires recounts to be requested by Friday after election may have to be changed OR if the audit shows a greater than 1% discrepancy in the audit results, allow the candidate(s) to request a recount and delay final certification of those races.

7. **WHO** selects jurisdictions for audit? Independent entity (Ballot Law Commission?), selected publicly with at least one R and D witnesses present.

8. **HOW** selected: Bingo-size balls in Bingo cage. Separate into three labeled cages: handcount, larger jurisdictions, other jurisdictions. Witnesses have verified ALL jurisdictions are included in the random selection.

9. **WHICH** contests audited? Federal races, governor and constitutional questions on the ballot (minus any race that is recounted). Based on result of audit, local officials may choose to check other contests.



10. **WHICH** ballots audited? ALL, include overseas, absentee and accessible voting ballots.

11. **WHERE** conducted? In local jurisdiction to avoid expense and problems with ballot chain of custody.

12. **HOW** conducted? Local officials recruit mixed party counters (can include undeclared) and oversee hand counts. SoS prepares forms. Members of the public may observe. **Audit results are based on voter intent**, which will vary some from the computer count.<sup>9</sup>

13. If any total of audit result for a specific contest or ballot question exceeds 1% discrepancy, SoS follows up. What kind of follow up is needed?

14. Ballots and ballot images available as public records after recount period is over, any legal challenge has ended and election results have been finalized.

**Prepared by Debbie Sumner, Oct. 20, 2021**

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<sup>1</sup> NH Const. esp. pt.1, art. 8—public accountability, transparency, pt. 2, art 32: moderator duty to “sort and count” votes in “open meeting” in the presence of the town clerk, selectmen and “all others who may take an interest in the election, **and be able and willing to detect and expose any error, and obtain a correction of it immediately, when it can be most easily corrected.**” *Opinion of the Justices*, 53 N.H. 640, 1873

<sup>2</sup> **Comments on RLAs** (risk-limiting audits)

The goal of the RLA is to have high assurance the right winner won. Based on our constitution and laws consistent with it, NH standards are higher than that. Our commitment should be to count every vote possible while understanding that no election is perfect. RSA 659:63

This paper exemplifies the mathematical complexity and sophistication of risk-limiting audits, well beyond that of the average citizen or election official:

<https://arxiv.org/pdf/1812.06361.pdf> - <https://arxiv.org/pdf/1812.06361.pdf> “Bernoulli Ballot Polling: A Manifest Improvement for Risk-Limiting Audits,” Kellie Ottoboni, Matthew Bernhard, J. Alex Halderman, Ronald L. Rivest and Philip B. Stark, Dec. 15, 2018.

<sup>3</sup> “Independent Observation and Analysis of Connecticut’s Audit of the 2019 General Election, Feb. 21, 2020. <http://ctelectionaudit.org/2020/ObservationReport2019Nov.pdf>

<sup>4</sup> Final Report “Electronic Ballot Counting Device Advisory Committee HB 285, Chapter 134, Laws of 2008 November 30, 2009,” p. 21

<sup>5</sup>[https://www.eac.gov/sites/default/files/paymentgrants/expenditures/2020\\_State\\_Grant\\_Expenditure\\_Report\\_FINAL.pdf](https://www.eac.gov/sites/default/files/paymentgrants/expenditures/2020_State_Grant_Expenditure_Report_FINAL.pdf)

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<sup>6</sup> [http://gencourt.state.nh.us/bill\\_status/billText.aspx?sy=2021&id=999&txtFormat=html](http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2021&id=999&txtFormat=html)

<sup>7</sup> [http://gencourt.state.nh.us/bill\\_Status/billText.aspx?sy=2020&id=1236&txtFormat=html](http://gencourt.state.nh.us/bill_Status/billText.aspx?sy=2020&id=1236&txtFormat=html)

<sup>8</sup> [https://codered2014.com/wp-content/uploads/2020/04/primaryElectionResultsAmazingStatisticalAnomalies\\_V2.1.pdf](https://codered2014.com/wp-content/uploads/2020/04/primaryElectionResultsAmazingStatisticalAnomalies_V2.1.pdf) “

“Republican Primary Election 2012 Results: Amazing Statistical Anomalies” by Francois Choquette and James Johnson, August 13, 2012.

<sup>9</sup> "The goal must be the ascertainment of the legally expressed choice of the voters. The object of election laws is to secure the rights of duly qualified voters, and not to defeat them." *Appeal of McDonough*, 149 N.H. 105, 112, (2003). RSA 659:64

**RSA 659:64 Determining Intention of Voter.** – If a ballot is marked for any office in a way which does not readily admit of counting or if a disagreement over how to count the ballot for any office occurs among the election officers present and counting votes, then the ballot shall be counted for that office in accordance with the majority vote of the election officials present and counting votes; provided that, if no alternative count receives a majority vote, the ballot shall be regarded as defective for that office as provided in RSA 659:65.

**Archived:** Wednesday, May 18, 2022 10:19:03 AM  
**From:** [Judy Aron](#)  
**Sent:** Sunday, January 23, 2022 11:58:37 AM  
**To:** ~[House Election Law Committee](#)  
**Subject:** FW: Election Transparency: Your Bill, HB 1522  
**Importance:** Normal

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Sharing with you.

Thank you,

Judy Aron  
NH State Representative  
Sullivan County District 7  
Acworth, Goshen. Langdon, Lempster, Washington  
266 Forest Rd., South Acworth, NH 03607  
603-843-5908

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Deborah Sumner <dsumner@myfairpoint.net>  
Date: 1/23/22 9:41 AM (GMT-05:00)  
To: Patrick Abrami <Patrick.Abrami@leg.state.nh.us>, Judy Aron <Judy.Aron@leg.state.nh.us>, Max Abramson <Max.Abramson@leg.state.nh.us>, tomlanzara@gmail.com  
Cc: Ellen Read <Ellen.Read@leg.state.nh.us>, ken Eyring <ken@intrinetsystems.com>, Mary Till <maryforderry@yahoo.com>  
Subject: Election Transparency: Your Bill, HB 1522

Dear legislators,

Didn't see the bill's text until after the hearing, but wanted to let you know about two amendments I proposed to SB 366 in testimony on that bill.

Your bill, Section 14 says: 14 Electronic Ballot Counting Devices; Rules. Amend RSA 656:42, IX to read as follows:

IX. Any electronic digital image of a marked ballot made by a ballot counting device, [ ~~whether stored on the device, on a removable memory device, or on a government computer, shall be non public and exempt from RSA 91-A~~ ] ***shall be made accessible to every citizen through digital imaging made public by every city or town within 8 hours of the close of the polls . Citizens shall be able to perform a "citizen's audit" to tie the counts in the official records to the ballot images. Citizens shall be informed at the time of casting ballots that digital copies of the ballots will be preserved and made public to protect any concerns over privacy.***

Hope you can find some way to make sure this change happens this year. FYI, VT ballots look just like ours (AccuVote computer and some hand count towns). Ballots and ballot images are public records there. In NH, the legislature exempted ballots at the request of then Deputy SoS Scanlan and then-assistant AG Fitch in 2003 and images at the request of the SoS in 2020 (I believe).

Not sure I agree with the TIMING of the release...I'd prefer waiting until after the recount period has ended. There is a legal process that should be completed first before the public has access. Candidates have recourse through the courts if evidence of a flawed election is found.

Am including Rep. Read and two others who are working on election transparency issues. I'm not speaking for any of them.

Thank you for representing the public's interest in election transparency!

Deborah Sumner  
474A Great Rd.  
Jaffrey, NH 03452  
603-532-8010

**Two Requested Amendments:** (to SB 366)

**1) Ballot Images accessible to the public, changes needed in current law**

**Legal standard for exempting public records for privacy reasons:**

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SB 366-FN - AS AMENDED BY THE SENATE

02/16/2022 0563s

2022 SESSION

22-3066

11/10

SENATE BILL **366-FN**

AN ACT requiring an audit of ballots cast in the 2022 primary and general election.

SPONSORS: Sen. Gray, Dist 6; Sen. Soucy, Dist 18; Sen. Birdsell, Dist 19; Rep. Barody, Hills.  
43

COMMITTEE: Election Law and Municipal Affairs

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AMENDED ANALYSIS

This bill requires an audit of ballots cast in the 2022 state primary and general elections, provided that the secretary of state may forego the general election audit.

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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 Twenty Two*

AN ACT requiring an audit of ballots cast in the 2022 primary and general election.

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

1       1 Audit Authorized. The secretary of state is hereby authorized to conduct an audit of the 2022  
2 state primary and general elections.

3       2 Equipment and Technical Assistance. The secretary of state shall procure the equipment and  
4 arrange for any required technical assistance to support the audit process. The equipment selected  
5 shall be capable of:

6           I. Reading AccuVote ballots.

7           II. Scanning approximately 2,000 ballots per hour.

8           III. Capturing an image of both sides of the ballot.

9           IV. Recording the voters' choices.

10          V. Assigning a unique identifier to each record.

11          VI. Displaying the ballot image and voter choice for randomly selected ballots by the unique  
12 identifier.

13       3 Preliminary Audit; State Primary Election. The secretary of state shall conduct an audit of at  
14 least 2 AccuVote devices used in the 2022 state primary election. The devices need not be selected at  
15 random. The intent of this audit is to identify problems with process to be used in the state general  
16 election audit. If the secretary of state is unable to resolve problems detected during the audit of the  
17 primary election, he or she may elect to forego the general election audit. If the secretary of state  
18 decides to forego the general election audit, he or she shall communicate his or her decision to the  
19 senate president, the speaker of the house of representatives, the chairperson of the senate election  
20 law and municipal affairs committee, and the chairperson of the house election law committee  
21 within 10 days from the date of the primary election.

22       4 State General Election Audit; 2022.

23           I. The secretary of state shall randomly select one to 3 percent of AccuVote devices, but not  
24 less than 4 such devices, to be used at the 2022 state general election to be audited. The secretary of  
25 state may divide devices into groups for the selection based on criteria such as the estimated number  
26 of election day ballots to be processed. The selection of devices to be audited shall be non-public and  
27 made at least 2 weeks prior to the general election, after the AccuVote memory cards have been  
28 programed.

29           II. The secretary of state shall not announce which devices have been selected to be audited  
30 until at least 12:00 p.m. on election day, and if a device is selected in a community that uses multiple  
31 devices the exact device shall not be identified until after the polls close.

1           III. The audit team shall consist of at least 2 individuals appointed by the secretary of state.  
2 One such individual shall have been trained by the secretary of state in the audit process and the  
3 use of audit equipment. The other individual, if not trained by the secretary of state in the audit  
4 process and the use of audit equipment, shall be an elected election official. The audit team shall  
5 scan all of the ballots which were cast and processed by the selected AccuVote machines.

6           IV. The audit shall be open to the public but no one except audit team members shall be  
7 allowed to touch any ballot or any of the audit equipment.

8           V. Results from the scanning of the ballots shall be announced by the audit team at the  
9 conclusion of the device audit.

10          VI. A random sample of not less than 5 percent of the ballots scanned shall be selected and  
11 the images of the ballots selected shall be compared with the voters' choices recorded for the ballot.  
12 Any differences identified during the comparison shall be documented.

13          VII. The secretary of state shall make the results of the audits available prior to 12:00 p.m.  
14 on the Friday after the election. The secretary shall also report the results to the ballot law  
15 commission, and the chairs of the house of representatives and senate standing committees with  
16 jurisdiction over election law.

17          5 Effective Date. This act shall take effect 60 days after its passage.



**SB 366-FN- FISCAL NOTE  
 AS INTRODUCED**

AN ACT requiring an audit of ballots cast in the 2022 primary and general election.

FISCAL IMPACT:  State  County  Local  None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	\$50,000 to \$100,000	\$0	\$0
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**METHODOLOGY:**

This bill authorizes the Secretary of State to conduct an audit of ballots cast in the State's 2022 primary and general elections by procuring equipment to scan and record ballots. The Department of State indicates the fiscal impact of this bill would be a one time cost to State General Fund expenditures in the amount of \$50,000 to \$100,000 in FY 2023 to purchase and program a new high speed scanner.

**AGENCIES CONTACTED:**

Department of State