

LEGISLATIVE COMMITTEE MINUTES

HB1163

Bill as Introduced

HB 1163 - AS AMENDED BY THE HOUSE

15Mar2022... 0741h

2022 SESSION

22-2367
11/04

HOUSE BILL **1163**

AN ACT relative to over voted ballots.

SPONSORS: Rep. Porter, Hills. 1; Rep. Berch, Ches. 1; Rep. Soti, Rock. 7; Rep. Ward, Rock. 28;
Rep. Santonastaso, Ches. 14; Sen. Soucy, Dist 18

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill requires that ballots which contain more than the allowable number of votes for an office on the ballot be returned to the voter to be hand counted by election officials after the polls close. The bill also requires the number of over voted ballots, as well as the number of overvotes and undervotes, be included in the return for each election.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 1163 - AS AMENDED BY THE HOUSE

15Mar2022... 0741h

22-2367
11/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to over voted ballots.

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

1 1 New Paragraph; Electronic Ballot Counting Devices; Rules; Over Voted Ballots. Amend RSA
2 656:42 by inserting after paragraph IX the following new paragraph:

3 X. The electronic ballot counting device shall be programmed to require that a ballot which
4 contains more than the allowable number of votes for an office or ballot question on the ballot,
5 known as an "over voted ballot", be returned to the election day voter by the device. The voter shall
6 be instructed to place the ballot in an auxiliary compartment to be hand counted by election officials
7 after the polls close. Over voted ballots of absentee voters shall be placed in the auxiliary
8 compartment by the moderator or his or her appointee to be counted after the polls close.

9 2 New Subparagraphs; Elections; General Content of Returns; Over Voted Ballots. Amend RSA
10 659:73, IV by inserting after subparagraph (j) the following new subparagraphs:

11 (k) For each election, the number of over voted ballots.

12 (l) For each contest or ballot question, the number of overvotes and undervotes.

13 3 Effective Date. This act shall take effect 30 days after its passage.

CHAPTER 134
HB 1163 - FINAL VERSION

15Mar2022... 0741h
12May2022... 1990EBA

2022 SESSION

22-2367
11/04

HOUSE BILL ***1163***

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CHAPTER 134
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15Mar2022... 0741h
12May2022... 1990EBA

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STATE OF NEW HAMPSHIRE

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6 place the ballot in an auxiliary compartment to be hand counted by election officials after the polls close.
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8 or her appointee to be counted after the polls close.

9 134:2 New Subparagraphs; Elections; General Content of Returns; Over Voted Ballots. Amend RSA
10 659:73, IV by inserting after subparagraph (j) the following new subparagraphs:

11 (k) For each election, the number of over voted ballots.

12 (l) For each contest or ballot question, the number of overvotes and undervotes.

13 134:3 New Paragraph; Electronic Ballot Counting Devices; Rules; Over Voted Ballots. Amend RSA
14 656:42 by inserting after paragraph X the following new paragraph:

15 XI. The electronic ballot counting device shall be programmed to require that a ballot which
16 contains more than the allowable number of votes for an office or ballot question on the ballot, known as
17 an "over voted ballot", be returned to the election day voter by the device. The voter shall be instructed to
18 place the ballot in an auxiliary compartment to be hand counted by election officials after the polls close.
19 Over voted ballots of absentee voters shall be placed in the auxiliary compartment by the moderator or his
20 or her appointee to be counted after the polls close.

21 134:4 Contingency. If HB 1157 of the 2022 regular legislative session becomes law, section 1 of this
22 act shall not take effect and section 3 of this act shall take effect 30 days after its passage. If HB 1157 of
23 the 2022 regular legislative session does not become law, section 1 of this bill shall take effect 30 days
24 after its passage and section 3 of this act shall not take effect.

25 134:5 Effective Date.

26 I. Sections 1 and 3 of this act shall take effect as provided in section 4 of this act.

 II. The remainder of this act shall take effect 30 days after its passage.

Approved: June 07, 2022

Effective Date:

I. Section 1 and 3 effective as provided in section 4

II. Remainder effective July 7, 2022

Committee Minutes

AMENDED
SENATE CALENDAR NOTICE
Election Law and Municipal Affairs

Sen James Gray, Chair
Sen Regina Birdsell, Vice Chair
Sen Ruth Ward, Member
Sen Donna Soucy, Member
Sen Rebecca Perkins Kwoka, Member

Date: April 6, 2022

HEARINGS

Monday

04/18/2022

Election Law and Municipal Affairs

State House 100

1:00 p.m.

1:00 p.m.	HB 1163	relative to over voted ballots.
1:10 p.m.	HB 1174	relative to election challengers.
1:20 p.m.	HB 1667	relative to the standard and optional veterans' tax credits and the all veterans' tax credit.
1:30 p.m.	HB 1406	authorizing municipalities to collect compost.
1:45 p.m.	HB 1307	modifying the authority and duties of the housing appeals board.
2:00 p.m.	HB 1170	limiting the authority of New Hampshire delegates to policymaking conventions.
2:15 p.m.		Hearing on proposed Amendment #1218s, relative to the length of terms for Rockingham county officers and the election of the Gunstock Area Commission., to HB 1397 , relative to the length of terms for Rockingham county officers.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 1163

Rep. Porter
Rep. Santonastaso

Rep. Berch
Sen. Soucy

Rep. Soti

Rep. Ward

HB 1174

Rep. Yakubovich
Rep. Love

Rep. Ankarberg

Rep. Abramson

Rep. Johnson

HB 1667

Rep. Pauer
Rep. Weyler

Rep. Baxter
Rep. Edwards

Rep. Binford
Rep. Foster

Rep. Homola
Sen. Avard

HB 1406

Rep. Egan
Rep. Weston

Rep. Gallagher
Sen. Hennessey

Rep. Myler

Rep. Alexander Jr.

HB 1307

Rep. B. Griffin

HB 1170

Rep. Wallace
Rep. Bernardy

Rep. Ulery

Rep. Hobson

Rep. Torosian

Tricia Melillo 271-3077

James P. Gray
Chairman

Senate Election Law and Municipal Affairs Committee
Tricia Melillo 271-3077

HB 1163, relative to over voted ballots.

Hearing Date: April 21, 2022

Members of the Committee Present: Senators Gray, Birdsell, Ward, Soucy and Perkins Kwoka

Members of the Committee Absent : None

Bill Analysis: This bill requires that ballots which contain more than the allowable number of votes for an office on the ballot be returned to the voter to be hand counted by election officials after the polls close. The bill also requires the number of over voted ballots, as well as the number of overvotes and undervotes, be included in the return for each election.

Sponsors:

Rep. Porter
Rep. Ward

Rep. Berch
Rep. Santonastaso

Rep. Soti
Sen. Soucy

Who supports the bill: 79 people signed up in support of the bill. The full sign in sheet is available upon request.

Who opposes the bill: 7 people signed up in opposition to the bill. The full sign in sheet is available upon request.

Summary of testimony presented in support:

Representative Marjorie Porter

- An over vote happens when more than the allowable number of votes have been made for an office or a ballot question.
- She showed the committee examples of an over voted ballot and stated that the voters choice would not be counted.
- In towns with hand counting, these votes would count but a town with machine counted ballots these votes would not.
- Our machines can be programmed to reject over voted ballots back to the voter.
- Section 301 of the HAVA states that the voter should be informed of the over vote and be allowed to correct it.
- Other states are surprised that we do not have a system to do that.
- The voting machine will reject a ballot with an over vote back to the voter to be hand counted.
- Only the voter will look at or handle the ballot.
- In the 2020 election the machines were programmed to record over votes and 4.7% of the ballots casts recorded over votes.
- 14.2% of the absentee ballots had over votes which amounted to 570 people who lost their vote.
- We have very close elections in New Hampshire and every vote should count.
- Senator Gray asked why this bill says nothing about the voter being able to get another ballot to mark.
 - Rep. Porter replied that the original bill included that but the Secretary of State had concerns about that and the amended version before this committee is a compromise.
- Senator Gray commented that in a machine count town voters are allowed to put the ballot into the machine but in a hand count town they are instructed to give the ballot to the moderator so they can be sure there is only one ballot. He asked if she could address how this bill has the voter take the ballot and put it into the box.

- Rep. Porter replied that there were issues with the bill and a major concern was voter privacy. The concern was that if the ballot went to the moderator they could see the vote and privacy would be violated. They decided to address that by letting the voter put the ballot into the box with instructions from the election workers.
- Senator Gray asked if the over vote information is on the long tape.
 - Rep. Porter stated that her understanding is that the machine can be programmed to tell the number of over votes or not. In Derry they programmed the machines to tell the over votes. She does not believe it is a requirement.
- Senator Ward asked what about a case when even with the hand counted ballot the voters intent cannot be determined
 - Rep. Porter replied that currently, that vote would not be counted.
- Senator Birdsall asked if the moderator will be there to let the voter know that their ballot was an under vote or over vote when the voter gets the ballot spit back out to them.
 - Rep. Porter replied that her understanding is that the screen will tell the moderator that it is an over voted ballot and then they can tell the voter.

Alvin See

- This bill should completely eliminate machine counted over votes.
- After each election there are usually many machine report tapes that show large numbers of over votes.
- There is a separate procedure to get the long tape report and it will tell you the total number of over votes.
- It may be appropriate for the Secretary of State, as part of the training for local election officials, to consider addressing a few process topics.
- If the in-person voter notices the over vote warning they should be allowed to go back and check for mistakes.
- Currently, the AccuVote machines sometimes reject a ballot for unknown reasons and those ballots should also be placed in the auxiliary compartment to be hand counted.
- It may be informative for local election officials to count the number of ballots that were set aside as over votes.

Ken Eysing

- One of the reasons this bill was rejected previously was that some felt it created two classes of voters.
- If the absentee ballot voter had an over voted ballot they would not have the same opportunity to correct it as the in person voter would.
- This bill as amended has allows any voter with an over voted ballot to have their ballot set aside to be hand counted.
- He sees this as an election integrity issue.
- It is a nonpartisan bill with both Democrats and Republicans as sponsors.
- This bill does not just address the issues that happened in Windham, it will address issues that happened in Merrimack and other towns as well.
- Rejected over votes is an issue that happens all across New Hampshire.
- Sometimes a vote would be attributed to a candidate that was not voted for
- They have to make sure that when they go to the polls their vote will count.

Kenneth Tasseey

- He observed the audit of the Windham, NH voting machines.
- He was astounded to learn that dust and creases in the paper ballots could throw off the voting machine count off
- This finding is enough to keep good people from going to the polls.
- This bill is one measure that will reestablish the confidence of the voters.

Tom Murray

- This is a systemic problem throughout the state.
- In New Hampshire there are ballot locations for everyone on the ballot.
- When the fold in the ballot goes through one of the offices, it creates an over vote and it is not counted.
- In Windham voters were disenfranchised due to the folds in the ballots.
- He looked at other machines throughout the state to see where else this problem occurred.
- He gave the over voter percentages from municipalities all across the state.
- Some candidates are in receipt of phantom votes because of the placement of their target oval on the ballot.
- The audits never matched the election day results.
- They took ten thousand ballots and ran them through 4 machines and could not get one of them to match.
- This bill is the best way to fix the over vote problem.

Al Brandano

- Citizens are losing trust in officials and the voting system.
- There have been over fifty bills proposed to change this and only two of them have survived.
- This last election there was only one third of eligible voters that turned out to vote.
- No one is ever held accountable for the mistakes made during elections.
- He urged the committee to please pass this bill.

Mary Till

- She has made it her goal that everyone who is eligible to vote has the opportunity to vote.
- HB 1163 is one small step toward that goal.
- It ensures that voter intent is considered when counting votes.
- That is not the case today in Derry and many other places in NH.
- In the 2020 election in Derry, there were 848 ballots with one or more over votes.
- That is nearly 5% of all the ballots cast in that election.
- The Windham recount illustrated this problem where folds on an absentee ballot or dust from an aged machine cause hundreds of votes to be discarded.
- The NH Supreme Court made it clear in the 2003 McDonough case that intent of the voter is the legal standard for counting votes.
- In a hand count town, the intent of the voter is noted and honored.
- In a machine count town, the machine discounts the vote as an over vote which denies all candidates a vote in that race, on that ballot.
- HB 1163 requires a simple programming change to return an over voted ballot directly to the in-person voter.
- The software for the programming has already been written as it is used in our neighboring states.
- The other issue with respect to programming, every machine records the number of over votes but unless you print out the long report you will not see the total.
- The machine, if it is programmed the way it is in our neighboring states, the screen will show that it is an over vote and which race it was for.
- Every voter has the right to have their vote counted.

Summary of testimony presented in opposition: None

TJM

Date Hearing Report completed: April 21, 2022

Speakers

Senate Remote Testify

Election Law and Municipal Affairs Committee Testify List for Bill HB1163 on 2022

Support: 71 Oppose: 6

<u>Name</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>
Beaudoin-Friede, Forrest	A Member of the Public	Myself	Oppose
Cawthron, John	A Member of the Public	Myself	Support
Colquhoun, Laura	A Member of the Public	Myself	Support
Sumner, Deborah	A Member of the Public	Myself	Support
Davis, Tod	A Member of the Public	Myself	Support
Morgan, Michelle	A Member of the Public	Myself	Support
Nelson, Elizabeth	A Member of the Public	Myself	Support
Dodge, Corinne	A Member of the Public	Myself	Support
Zoeller, Charles	A Member of the Public	Myself	Support
Paoletti, Karin	A Member of the Public	Myself	Support
Datiner-Levy, Amy	A Member of the Public	Myself	Support
Glassman, Barbara	A Member of the Public	Myself	Support
Soucy, Donna	An Elected Official	SD 18	Support
Maldonado, Ursula	A Member of the Public	Myself	Support
Till, Mary	A Member of the Public	Myself	Support
Guevarra, Larry	A Member of the Public	Myself	Support
Garland, Ann	A Member of the Public	Myself	Support
Waterman, Raymond	A Member of the Public	Myself	Support
Waterman, Patricia	A Member of the Public	Myself	Support
Desmarais, Doreen	A Member of the Public	Myself	Support
Eisner, Mary	A Member of the Public	Myself	Support
Beatrice, Donna	A Member of the Public	Myself	Support
Beatrice, John	A Member of the Public	Myself	Support
Osborne, Stephanie	A Member of the Public	Myself	Support
Almy, Susan	An Elected Official	Myself	Support
O'Rorke, Terri	A Member of the Public	Myself	Support
Kelley, BaoChau	A Member of the Public	Myself	Support
Eyring, Ken	A Member of the Public	Myself	Support
Bennett, Ryan	A Member of the Public	Myself	Support
Roux, Deb	A Member of the Public	Myself	Support
Blumenshine, Kent	A Member of the Public	Myself	Support
Kozikowski, Bruce	A Member of the Public	Myself	Support
Bishop, Deborah	A Member of the Public	Myself	Support
Landry, rosemary	A Member of the Public	Myself	Support
Walker, Debra	A Member of the Public	Myself	Support
Cox, Terry	A Member of the Public	Myself	Support
Moran, Ronald Bruce	A Member of the Public	Myself	Support
Moran, Ann-Marie	A Member of the Public	Myself	Support
Brown, Kathleen	A Member of the Public	Myself	Support
Sibley, Jon	A Member of the Public	Myself	Support
Hagenow, Janice	A Member of the Public	Myself	Support
Carter, Kathleen	A Member of the Public	Myself	Support
Moore, Michael	A Member of the Public	Myself	Support
Cloutier, Suzanne	A Member of the Public	Myself	Support
Brandano, Al	A Member of the Public	Myself	Support
Guvon, Taci	A Member of the Public	Myself	Support

Economakis, Melissa	A Member of the Public	Myself	Support
Thorkildsen, Roy	A Member of the Public	Myself	Support
Freedman, Aubrey	A Member of the Public	Myself	Support
kirsch, walter	A Member of the Public	Myself	Support
Dewey, Karen	A Member of the Public	Myself	Support
Mazur, Lisa	A Member of the Public	Myself	Support
O'Neil, Anne-Marie	A Member of the Public	Myself	Support
Merrick, Debra	A Member of the Public	Myself	Support
Ferrantello, Dr.Donna	A Member of the Public	Myself	Support
Diggins, Margie	A Member of the Public	Myself	Support
Berlo, James	A Member of the Public	Myself	Support
Thalheimer, David	A Member of the Public	Myself	Support
Cole, Fletcher	A Member of the Public	Myself	Support
Petrusewicz, Carol	A Member of the Public	Myself	Support
Ferrantello, Anthony	A Member of the Public	Myself	Support
Bourbeau, Sally	A Member of the Public	Myself	Support
Hoell, JR	A Member of the Public	Myself	Support
Chadwick, Ray	A Member of the Public	Myself	Oppose
Doherty, David	A Member of the Public	Myself	Support
Park, Jr., Kenneth	A Member of the Public	Myself	Oppose
Reese, Karen Lee	A Member of the Public	Myself	Support
Healey, Barbara	A Member of the Public	Myself	Oppose
Lanc, Connie	An Elected Official	Merrimack District 12	Oppose
Hebert, Lillian	A Member of the Public	Myself	Support
Bundy, Linda	A Member of the Public	Myself	Support
Rigazio, Sandra	A Member of the Public	Myself	Support
Kudlik, Cindy	An Elected Official	Myself	Oppose
House, Nancy	A Member of the Public	Myself	Support
LaPointe, Susan	A Member of the Public	Myself	Support
Kiely, Cecilia	A Member of the Public	Myself	Support
Emus, Joanne	A Member of the Public	Myself	Support

Testimony

Tricia Melillo

From: Deb Roux <bealight2020@gmail.com>
Sent: Saturday, April 16, 2022 11:48 PM
Subject: Please support HB1163

Dear Senator,

Please support HB1163. We the people want our elections to be secure and only allow legal votes to count. Please stand with us and support HB1163.

Thank you and God bless,

Deb

Tricia Melillo

From: Kathleen Brown <brown57kat@gmail.com>
Sent: Sunday, April 17, 2022 9:54 AM
To: James Gray
Cc: Regina Birdsell; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo
Subject: SUPPORT HB1163

Hon. Committee Members:

Please SUPPORT HB1263 because many voters are disenfranchised by machines erroneously tabulating over votes. This needs to be addressed, and this Bill will prohibit voting machines from tabulating over votes and thereby disenfranchise voters.

All ballots that are "read" by a voting machine as containing an over voted race, would be returned to the voter so that it can be placed in an auxilliary compartment and be hand-counted when the polls close. This would lead to a more accurate tabulation of votes.

Thank you.
Kathleen Brown
Newport NH

Tricia Melillo

From: Laura Colquhoun <lauracolquhoun2@gmail.com>
Sent: Sunday, April 17, 2022 4:55 PM
To: James Gray; Regina Birdsell; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo
Subject: Support HB1163

Election Law & Municipal Affairs:

My name is Laura Colquhoun and I am a resident of Nashua NH.

I am asking you to **Support HB1163**. Many New Hampshire voters are disenfranchised by machines erroneously tabulating over votes. This bill will prohibit voting machines from tabulating over votes. All ballots that are "read" by a voting machine as containing an over-voted race, would be returned to the voter so that it can be placed in an auxiliary compartment and be hand-counted when the polls close. This action would lead to a more accurate tabulation of votes.

Please support HB1163. Thank you.

Very truly yours,
Laura Colquhoun
30 Greenwood Dr
Nashua, NH 03062
603-402-9339

--
Laura Colquhoun

Tricia Melillo

From: Taci Guven <taci.guven@yahoo.com>
Sent: Sunday, April 17, 2022 10:13 PM
To: Regina Birdsell; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo; James Gray
Subject: HB 1163

Dear Committee Members,

I urge you to support HB 1163, relative to over voted ballots.

This bill will prohibit voting machines from tabulating over votes and thereby disenfranchise voters.

We must pass this bill for election integrity in our state.

Thank you
Taci Guven
Windham, NH

Sent from my iPhone

Comments to the Senate Committee on Election Law and Municipal Affairs

April 18, 2022

House Bill 1163: Relative to over voted ballots.

Alvin See
Loudon, NH
603-738-0656

I am in support of House Bill 1163, a bill to require the AccuVote machines to be programmed to return over voted ballots.

This bill provides for the AccuVote machines to return an apparently (to the machine) over voted ballot to the voter, or to the election official in the case of absentee ballots. The ballots would then be placed in the auxiliary compartment to be hand-counted later.

This should completely eliminate machine counted over votes since all ballots with possible over votes will be hand counted where the voters intent can be judged by human eyes.

It may be appropriate for the Secretary of State, as part of the training for local election officials, to consider these topics:

1. If the in-person voter notices the 'over vote' warning and asks to go back to check for mistakes, that he or she be allowed to do so without hassle even though the official attending the machine is to ask the voter to place the ballot in the auxiliary compartment.
2. Currently, the AccuVote machines sometimes reject a ballot for unknown reasons and even though we don't require such programming. Any ballot rejected for any reason should be placed in the auxiliary compartment without any additional attempts to feed it into the machine.
3. It may be informative to have local election officials to count the number of ballots that went into the auxiliary compartment as a separate number from any other ballots that already would have been hand counted, such as the UOCAVA ballots, etc. This could show how prevalent the over vote problem in these machines is.

After each election, there are usually many machine report tapes that show large numbers of over votes. More than a few such over votes should be considered unacceptable. If this bill is enacted, then that over vote number on the reports of all machines should be zero. If this bill had been in effect for the 2020 elections, the Windham election would have been accurately counted on election day, although the issue of incorrectly folded ballots may not have been noticed.

I urge this Committee to recommend Ought-To-Pass for House Bill 1163.

Thank you very much for your consideration.

VT Overvote procedure

1 message

Bjornlund, Lori <Lori.Bjornlund@vermont.gov>
To: "maporter995@gmail.com" <maporter995@gmail.com>

Tue, Sep 7, 2021 at 10:15 AM

Hello Representative Porter,

Here is the section in statute that pertains to Overvotes, Cite as: 17 V.S.A. § 2493

(4)(A) All vote tabulators shall be set to reject a ballot that contains an overvote and the voter shall be provided the opportunity to obtain another ballot and correct the overvote. If an early voter absentee ballot contains an overvote, the elections official shall override the vote tabulator and count all races except any race that contains an overvote.

This is our Voter Tabulator Guide we distribute to Town Clerks and Election Officials you may find it useful.
<https://outside.vermont.gov/dept/sos/Elections%20Division/town%20clerks%20and%20local%20elections/election%20supplies/vermont-vote-tabulator-guide.pdf>

Here is the section from within the guide that pertains to how poll workers should handle an overvoted ballot,

C. "Over voted race"

1. means the voter marked more candidates for an office than the "Vote for Not More Than #" for that race, OR
2. a stray mark or fold on the ballot may have been read as an extra vote.
3. Discreetly explain to the voter that too many choices were marked for one race.
 - i. ASK the voter to review the ballot to see if too many candidates were marked for one office or to look for stray marks. If the voter can't see the error, feed the ballot again.
 - ii. If the ballot is returned again with "over voted race" on the LCD screen,
 1. Ask the voter if they want to return the ballot to the entrance checklist officials to obtain and mark a new ballot.
 2. If the voter chooses not to mark a new ballot, explain that the machine will count all properly marked races but will not count the vote in the "over voted office."
 3. The election official can use the plastic key to open the upper front panel access door and hold the YES button while instructing the voter to insert the ballot OR the voter may place the ballot in the Auxiliary compartment.

Please let me know if you have any further questions.

FW: Overvote Procedures

Rich Lambert <Rich.Lambert@leg.state.nh.us>

Mon 9/13/2021 3:23 PM

To: Marjorie Porter <Marjorie.Porter@leg.state.nh.us>

From: Saige Draeger <saige.draeger@ncsl.org>

Sent: Monday, September 13, 2021 1:12 PM

To: Rich Lambert <Rich.Lambert@leg.state.nh.us>

Cc: Amanda Zoch <amanda.zoch@ncsl.org>; Wendy Underhill <wendy.underhill@ncsl.org>

Subject: Overvote Procedures

Hi Rich,

Thanks again for reaching out to NCSL with your request. We asked around on how other states handle overvoted ballots, without identifying you or your state. Here's what they said:

Massachusetts:

Vendors are instructed to program machines to reject ballots on which an overvote is detected. The poll worker then notifies the voter that there is an overvote and allows them to get a replacement ballot. Some voters, however, don't want to vote another ballot and instead decide to cast the original, despite knowing that the office will be counted as a blank. For some equipment, the ballot would be placed in the hand count compartment and for newer equipment, the screen gives an option to count the ballot with that office as a blank.

Rhode Island:

If an over-voted ballot is placed into a voting machine, the machine notifies the voter and asks if they want the ballot back or to submit it as voted. If the voter chooses to submit the ballot despite the overvote, all races on the ballot will count with the exception of the overvoted race. More detail provided in [§ 17-19-24](#).

Connecticut:

A machine will notify the voter of the race that is over-voted. The voter can then opt to receive a new ballot (destroying the first) or to leave the ballot as is. In that case, all races properly voted will be counted and the overvoted race will not be counted. More detail in section [9-242a-18](#), Regulations of Connecticut State Agencies.

Vermont:

Tabulators in Vermont are required to be set to initially reject a ballot that contains an overvoted race. The voter can then vote a new ballot if they wish to. Alternatively, that rejection can be overridden if the voter requests it, and all of the other races will be counted, with an overvote registered for the overvoted race. The override is also used when the election officials are processing early ballots and the voter is not present. More detail in [17 V.S.A. 2493\(a\)\(4\)\(A\)](#).

We have two additional notes out to contacts in Maine and Pennsylvania. I'll follow-up with any additional information once we hear back.

Best,

Saige Draeger

National Conference of State Legislatures
Policy Associate – Elections & Redistricting
303.856.1512 (o)

Support HB 1163

My name is Mary Till, a former Town Moderator from Derry. Ever since I served in the legislature on ^{the} ~~this~~ ^{House} ~~very~~ Election Law committee, I have made it my goal to make sure that everyone who is eligible to vote, has the opportunity to vote, and to know that their vote was accurately and completely counted. It's only fair.

HB 1163 is one small step toward that goal. It ensures that voter intent is considered when counting votes. That is not the case today in Derry and many other places in NH. In the 2020 general election in Derry there were 848 ballots with one or more over votes. That's nearly 5% of all the ballots cast in that election.

The Windham recount illustrated this problem where folds on an absentee ballot or dust from an aged machine were wrongly mistaken for an intentional vote causing hundreds of votes to be discarded.

The NH Supreme Court made it clear in the 2003 *McDonough* case that intent of the voter is the legal standard for counting votes.

In a hand count town, the intent of the voter is noted and honored. In a machine count town, the machine discounts the vote as an over vote, denying all

Support HB 1163

candidates a vote in that race on that ballot. This is most egregious in multi-seat races like many NH House seats.

HB 1163 requires a simple programming change to return an over voted ballot directly to the in-person voter. It's free because LHS has already written the software for our neighboring states. The machine notes an over vote and the moderator instructs the voter to place the ballot in the side pocket to be hand counted. For in-person voters, the moderator never touches the ballot. Confidentiality is protected. For absentee voters, the ballot is immediately placed in the side pocket for later hand counting.

Please pass this legislation so hundreds of NH votes will not be discarded in upcoming elections. Let every vote be counted. It's time.

Finally, I support the proposed amendment to HB 1163 requested by the Secretary of State.

Mary Till
Derry, NH, 603 203 1961

Tricia Melillo

From: melissa wydola <meliscsj@gmail.com>
Sent: Sunday, April 17, 2022 11:53 PM
To: James Gray; Ruth Ward; Regina Birdsell; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo
Subject: HB 1163

Hi,

Please support HB 1163. The voices of the citizens of NH deserve to be heard. We want to ensure that our votes count and that they won't be misrepresented. Too many voters are disenfranchised by machines erroneously tabulating over votes, and this needs to be addressed. We need to prohibit the voting machines from tabulating over votes. All ballots that are "read" by a voting machine as containing an overvoted race, should be returned to the voter so that it can be placed in an auxiliary compartment and be hand-counted when the polls close which would lead to a more accurate tabulation of votes. There needs to be transparency and we need to preserve fair elections in the future. We need to have faith in our voting system, and make any improvements or corrections necessary so we can believe our votes as US citizens truly count within an integral structured system. Please note this is not about democrats or republicans. This is about an honest future for us and our children.

Thank you for taking the time to read this.

Sincerely,
Melissa Economakis

Tricia Melillo

From: Anne-Marie O'Neil <a912m430o@protonmail.com>
Sent: Monday, April 18, 2022 7:28 AM
To: James Gray; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Regina Birdsell; Tricia Melillo
Subject: HB1163

Good morning,

I am respectfully requesting that you support HB1163. Election integrity is so important to our state. Thank you.

Anne-Marie O'Neil
7 Blossom Rd
Windham NH 03087

Sent with [ProtonMail](#) secure email.

Tricia Melillo

From: Donna F. <shimjung1@gmail.com>
Sent: Monday, April 18, 2022 7:48 AM
To: James Gray; Regina Birdsell; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo
Subject: Support HB 1163

Dear Committee Leaders:

Please support HB 1163 on 4/18 at 11:00 pm that will ensure that voters are not disenfranchised due to machines using an overvoting system.

Ideally, we should use a paper ballot system so that we don't have to rely on machines that err.

This bill insists that all ballots that are read as an over voted race would be returned to the voter so that it can be placed in an auxiliary compartment and be hand-counted when the polls close.

We need a tabulation system that ensures votes that count and does not confuse the tabulation with erroneous machine system errors.

I strongly support this new bill and encourage you to do so for the sake of citizens in NH.

Sincerely,

Donna Ferrantello, Ph.D.

84 Woodland Ave.

Keene, NH 03431

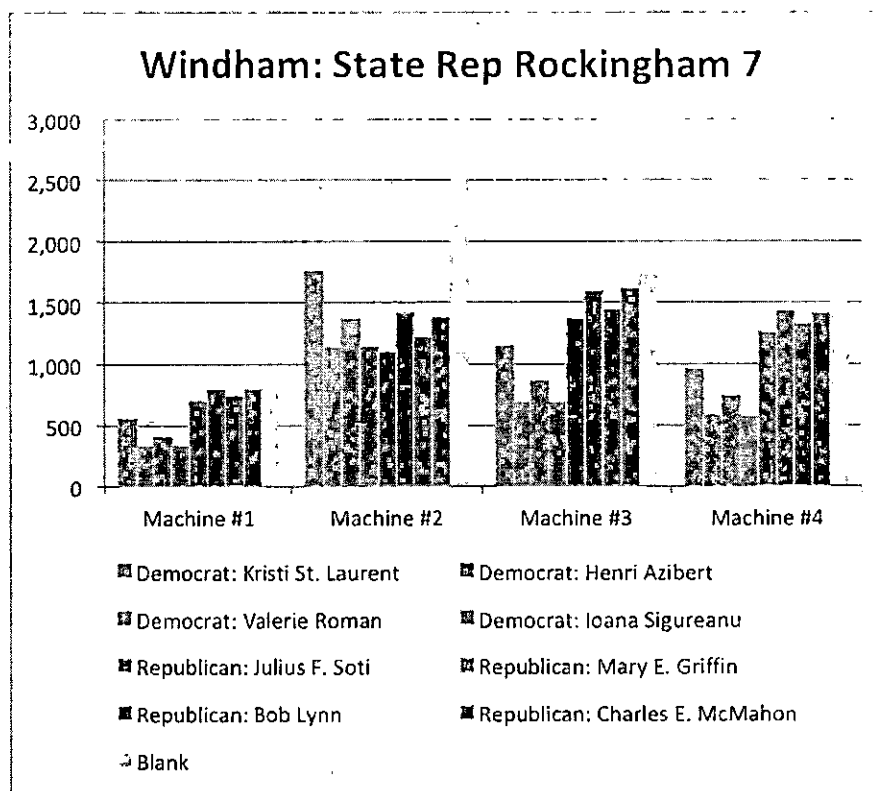
I Support Election Integrity: HB1163

Do you remember the overvote problem in Windham in the November 2020 election that was caused by machines reading folds going through voting ovals? Without the audit, voters would have been disenfranchised when their votes were not counted or were improperly counted. We simply can't have machines that don't work properly. In fact, every machine count should be accompanied by a subsequent or simultaneous hand count to verify the machines. Below is the data on the Windham miscount plus a chart showing the excessive pattern of blank votes caused by faulty machine overvotes.

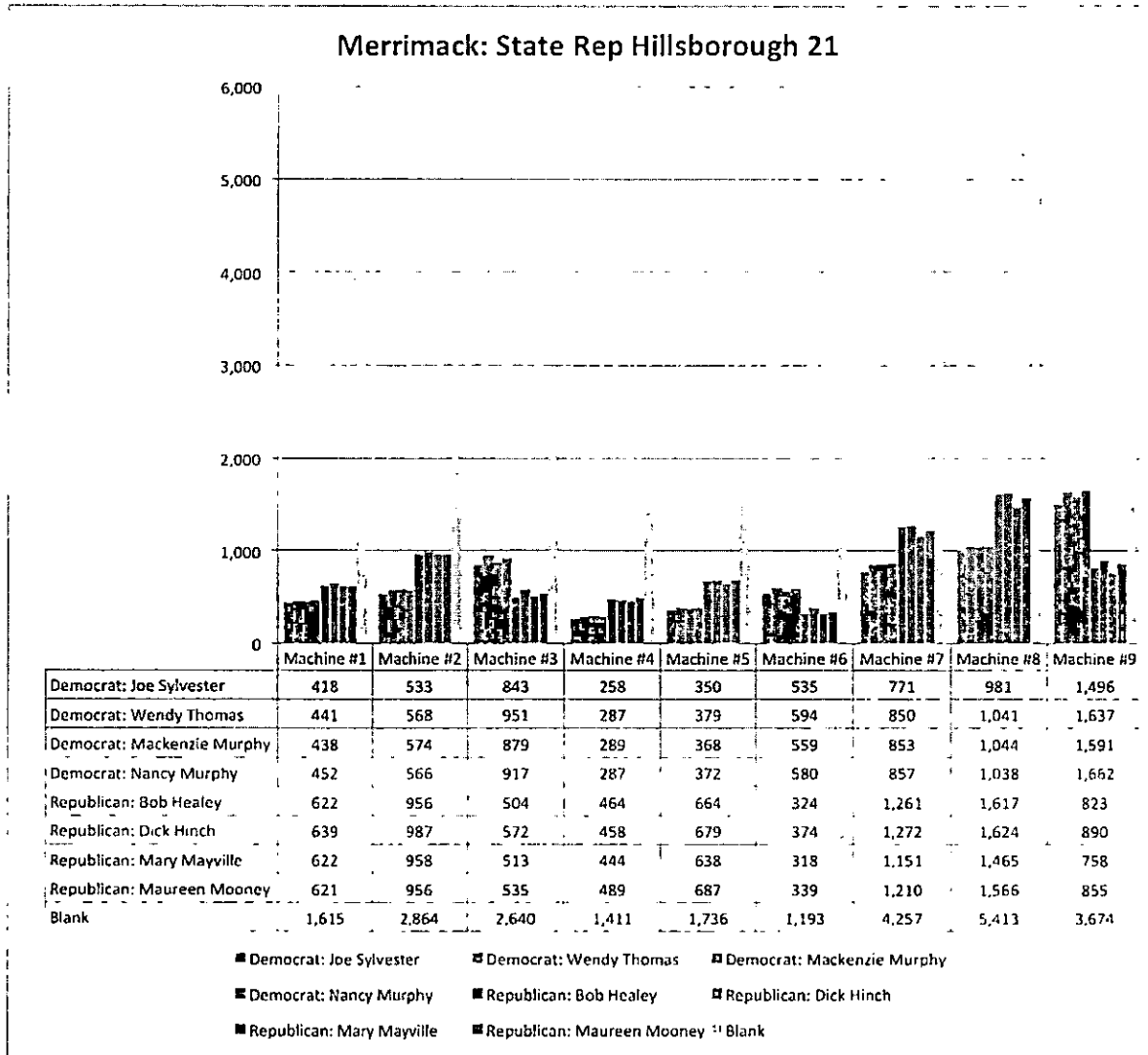
Actual Results Based on Recount of the State Representative Votes (4 candidates selected)

	Election Day Results	Recount Results	Difference in Recount Results	Effect of Incorrect Machine Count	Official Results	Real Results
State Representatives:						
Blank (no candidate chosen)	6,661	5,496	(1,165)	21.2%	16.7%	13.8%
Democrat: Kristi St. Laurent	4,456	4,357	(99)	2.3%	11.2%	10.9%
Democrat: Henri Azibert	2,787	2,808	21	-0.7%	7.0%	7.0%
Democrat: Valerie Roman	3,415	3,443	28	-0.8%	8.6%	8.6%
Democrat: Ioana Sigureanu	2,764	2,782	18	-0.6%	6.9%	7.0%
Republican: Julius F. Soti	4,480	4,777	297	-6.2%	11.2%	12.0%
Republican: Mary E. Griffin	5,292	5,591	299	-5.3%	13.9%	14.0%
Republican: Bob Lynn	4,786	5,089	303	-6.0%	12.0%	12.7%
Republican: Charles E. McMahon	5,256	5,554	298	-5.4%	13.2%	13.9%
Summary:						
Change in Democrat votes during recount			(32)			
Change in Republican votes during recount			1,197			
Net change in votes*			1,165			

* Blank selections were not included in the recount, but the reduction in votes must result in an increase in blank results

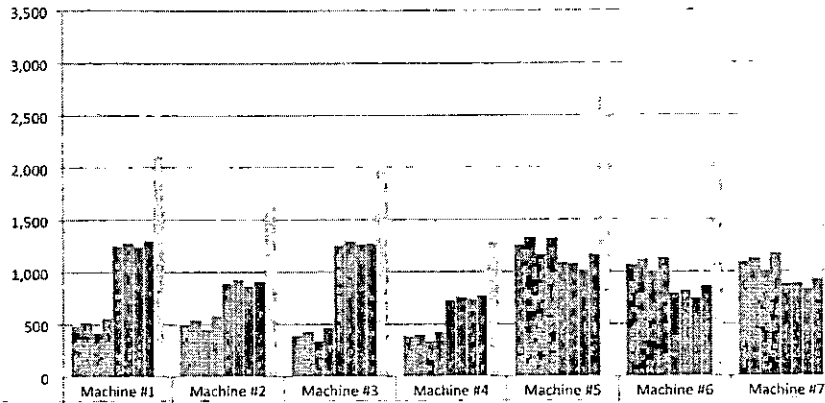


During the November, 2020 general election, one Merrimack voting machine tabulated a massive number of 396 over votes on 1,738 ballots (22.78% of ballots), while another Merrimack voting machine tabulated only 14 over votes on 1,856 ballots (.75% of ballots). The following chart shows even more excessive numbers of blank votes than in Windham.



Below are even more charts showing excessive blank votes as well as patterns that show some machines may be acting differently than others.

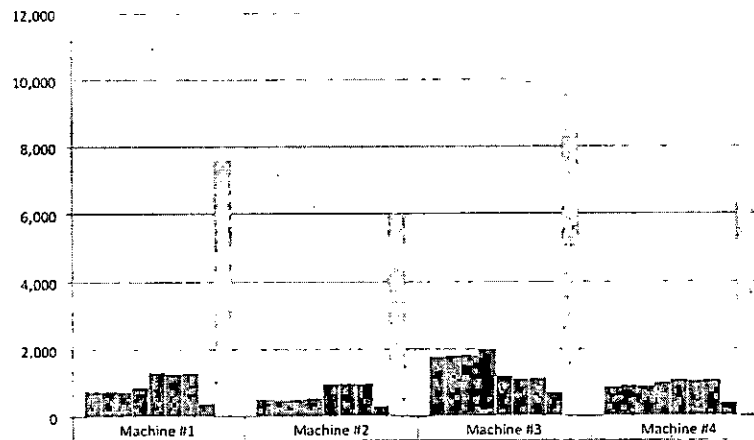
Bedford: State Rep Hillsborough 7



	Machine #1	Machine #2	Machine #3	Machine #4	Machine #5	Machine #6	Machine #7
Democrat: Shana Potvin	482	499	388	380	1,259	1,066	1,089
Democrat: Catherine Rombeau	512	534	424	398	1,332	1,117	1,127
Democrat: Cheri Schmitt	422	450	338	339	1,162	1,008	1,010
Democrat: Daniel Dong	555	579	465	429	1,326	1,136	1,180
Republican: John Graham	1,251	893	1,250	726	1,089	792	885
Republican: Niki Kelsey	1,282	924	1,296	761	1,081	822	893
Republican: Ted Gorski	1,247	870	1,267	741	1,018	747	836
Republican: Linda Gould	1,301	908	1,274	769	1,169	869	927
Blank	2,119	1,677	1,971	1,279	2,873	2,262	2,339

■ Democrat: Shana Potvin ■ Democrat: Catherine Rombeau ■ Democrat: Cheri Schmitt
 ■ Democrat: Daniel Dong ■ Republican: John Graham ■ Republican: Niki Kelsey
 ■ Republican: Ted Gorski ■ Republican: Linda Gould ■ Blank

Derry: State Rep Rockingham 6



	Machine #1	Machine #2	Machine #3	Machine #4
Democrat: Thomas Wood	740	516	1,766	863
Democrat: Amy Dattmer-Levy	753	479	1,792	901
Democrat: Paul Doolittle	743	487	1,815	877
Democrat: Mary Eisner	865	549	1,993	1,004
Republican: K. O'Brien	1,306	950	1,192	1,098
Republican: Stephen Pearson	1,277	966	1,104	1,045
Republican: John Potucek	1,296	971	1,139	1,066
Undeclared: Brenda Willis	395	289	698	383
Blank	7,618	6,049	9,641	6,782

■ Democrat: Thomas Wood ■ Democrat: Amy Dattmer-Levy ■ Democrat: Paul Doolittle
 ■ Democrat: Mary Eisner ■ Republican: K. O'Brien ■ Republican: Stephen Pearson
 ■ Republican: John Potucek ■ Undeclared: Brenda Willis ■ Blank

Tricia Melillo

From: Anthony Ferrantello <ajfnino@gmail.com>
Sent: Monday, April 18, 2022 8:04 AM
To: James Gray; Regina Birdsell; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo
Subject: Please Pass HB1163 into Law

Please help HB1163 become law. It has already passed the House and it is critical that it becomes law to address the incorrect voter tabulation of over votes by voting machines. Personally, I would prefer paper ballots, but this is a good step in preventing disenfranchisement of voters, as HB1163 would facilitate a more accurate tabulation of votes by hand counting all ballots deemed over votes by voting machines.

Thank you,

Anthony Ferrantello
Keene

Tricia Melillo

From: Ray Chadwick <rfchadwick@juno.com>
Sent: Monday, April 18, 2022 9:08 AM
To: James Gray; Regina Birdsell; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo
Cc: dmc2015@comcast.net; danmcguire@gmail.com
Subject: Granite State Taxpayers Opposes HB 1163

Election Law and Municipal Affairs Committee Members

Granite State Taxpayers Opposes HB 1163

This bill requires that ballots which contain more than the allowable number of votes for an office on the ballot be returned to the voter for possible correction before the ballot is counted.

GST supports revising New Hampshire voter law to make our voting system simple to understand and execute, resistant to fraud, and available exclusively to bona fide residents of New Hampshire.

The election strategy with the most accuracy, and the least opportunity for fraud, is one where:

- individuals themselves, in person, go to a polling place
- they show proof of identity, citizenship, and residence in New Hampshire in order to vote
- they receive a ballot, mark it in private, and place it in a counting machine or other secure container
- voted ballots are under control of local and state election officials for counting, archiving, and recounts

The proposal to return over vote ballots to voters for further processing by either them or election officials adds complexity and additional handling.

Additionally, the process creates the potential that an individual voters' ballot may be exposed to election officials either through the process of returning the ballot to the voter for correction or in case the voter doesn't choose to correct the area and the ballot is "counted by election officials."

Voters should have sole responsibility for the accuracy of their ballot and should be able to count on their ballot not being able to be seen and identified with them by election officials.

Voters should be presumed to be able to follow directions such as: *Vote for not more than two (2)*

Granite State Taxpayers Recommends an ITL vote for HB 1163.

Thank you for your attention and for your commitment to the citizens of New Hampshire.

Ray Chadwick, Chairman
Granite State Taxpayers
101 Powder Hill Road
Bedford, NH 03110
1-603-566-9129
www.GraniteStateTaxpayers.org

Voting Sheets

**Senate Election Law
& Municipal Affairs Committee
EXECUTIVE SESSION RECORD
2022 Session**

Bill **HB 1163**

Hearing date: 4/18/22

Executive Session date: 4/18/22

Motion of: OTP Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: Consent Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sen. Birdsell

Notes: _____

Committee Report

General Court of New Hampshire - Bill Status System

Docket of HB1163

Docket Abbreviations

Bill Title: relative to over voted ballots.*Official Docket of HB1163.:*

Date	Body	Description
11/17/2021	H	Introduced 01/05/2022 and referred to Election Law
2/23/2022	H	Public Hearing: 02/23/2022 9:30 a.m. LOB306-308
2/19/2022	H	Public Hearing on non-germane Amendment #2022-0735h : 02/23/2022 10:00 am LOB 306-308
3/9/2022	H	Executive Session: 03/09/2022 10:00 a.m. LOB306-308
3/9/2022	H	Committee Report: Ought to Pass with Amendment #2022-0741h (Vote 19-1; CC)
3/16/2022	H	Amendment #2022-0741h : AA VV 03/15/2022 HJ 6
3/15/2022	H	Ought to Pass with Amendment 2022-0741h: MA VV 03/15/2022 HJ 6
3/22/2022	S	Introduced 03/17/2022 and Referred to Election Law and Municipal Affairs; SJ 6
4/6/2022	S	Hearing: 04/18/2022, Room 100, SH, 01:00 pm; SC 15
4/20/2022	S	Committee Report: Ought to Pass, 04/28/2022; Vote 5-0; CC; SC 17
4/28/2022	S	Ought to Pass: MA, VV; OT3rdg; 04/28/2022; SJ 10
5/19/2022	S	Enrolled Bill Amendment #2022-1990e Adopted, VV, (In recess of 05/12/2022); SJ 13
5/19/2022	H	Enrolled Bill Amendment #2022-1990EBA : AA VV (in recess of) 05/12/2022 HJ 13
5/27/2022	S	Enrolled Adopted, VV, (In recess 05/26/2022); SJ 13
5/27/2022	H	Enrolled (in recess of) 05/26/2022 HJ 14
6/8/2022	H	Signed by Governor Sununu 06/07/2022; Chapter 134; eff.I Sec 1 & 3 eff. as provided in Sec 4 II Rem eff 07/07/2022

NH House

NH Senate

Other Referrals

May 11, 2022
2022-1990-EBA
08/04

Enrolled Bill Amendment to HB 1163

The Committee on Enrolled Bills to which was referred HB 1163

AN ACT relative to over voted ballots.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 1163

This enrolled bill amendment renumbers a paragraph to resolve a conflict with 2022, HB 1157.

Enrolled Bill Amendment to HB 1163

Amend the bill by replacing all after section 2 with the following:

3 New Paragraph; Electronic Ballot Counting Devices; Rules; Over Voted Ballots. Amend RSA 656:42 by inserting after paragraph X the following new paragraph:

XI. The electronic ballot counting device shall be programmed to require that a ballot which contains more than the allowable number of votes for an office or ballot question on the ballot, known as an "over voted ballot", be returned to the election day voter by the device. The voter shall be instructed to place the ballot in an auxiliary compartment to be hand counted by election officials after the polls close. Over voted ballots of absentee voters shall be placed in the auxiliary compartment by the moderator or his or her appointee to be counted after the polls close.

4 Contingency. If HB 1157 of the 2022 regular legislative session becomes law, section 1 of this act shall not take effect and section 3 of this act shall take effect 30 days after its passage. If HB 1157 of the 2022 regular legislative session does not become law, section 1 of this bill shall take effect 30 days after its passage and section 3 of this act shall not take effect.

5 Effective Date.

- I. Sections 1 and 3 of this act shall take effect as provided in section 4 of this act.
- II. The remainder of this act shall take effect 30 days after its passage.

Senate Inventory Checklist for Archives

Bill Number: HB 1163 Senate Committee: ELMA

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 # _____ - 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) 1990

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:

Trucca Melillo
Committee Aide

6/22/22
Date

Senate Clerk's Office AK