Floor Amendment to HB 345

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

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

4 VII. Each electronic ballot counting device shall have a ***removable*** memory [card, a metal

5 bar covering the inserted memory card, a canvas cover closed by 2 zippers, 2 hard shell covers on

6 the front of the device, a hard shell cover on the rear of the device, and 3 communication ports in

7 the rear of the device] ***device which can be secured in the device with a tamper evident seal***

8 ***that will disclose unauthorized access to the hardware and software inside the device.***

9 ***Electronic ballot counting devices that are stored in a canvas bag or storage case when***

10 ***not in use shall have a bag or case that is capable of being secured with a tamper evident***

11 ***seal***.

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

13 follows:

14 (b) The town or city clerk shall preserve each memory [card] ***device*** used at each

15 election until after the recounts for such election are complete and any and all legal challenges to

16 the outcome of that election are adjudicated.

17 (c) The town or city clerk shall securely preserve each memory [card] ***device*** used in

18 any election as directed by the secretary of state.

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

20 follows:

21 (A) The connection of the [2] zippers on the closed canvas cover of the counting

22 device ***carrying bag, case, or the device base for devices stored in their bases***.

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

24 (C) Electronic ballot counting device housing[:

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

26 device.

27 (ii) The seam connecting the hard shell cover on the rear of the counting

28 device.

29 (iii) The 3 communication ports in the rear of the counting device] ***and all***

30 ***ports or access points to the device hardware or software, such that the seal(s) would be***

31 ***broken if the device is accessed***.

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

1   follows:

2   (7) Whenever the town or city clerk receives a memory [card] *device* from the

3   vendor, the clerk shall break the memory [card] *device* seal, insert the memory [card] *device* in the

4   electronic ballot counting device, and apply a new seal. The clerk shall lock any ***programmed***

5   memory [card] *device* not inserted into an electronic ballot counting device in a safe and record the

6   names of individuals that have access to such safe on the activity log.

7   (8) Whenever the town or city clerk removes the memory [card] *device* from the

8   electronic ballot counting device, the clerk shall immediately return it to the memory card

9   programmer ***or, if programmed locally, secure the device in a safe*** and reseal the [metal bar in

10   front of the] empty memory [card] *device* slot ***or port***.

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

12   follows:

13   (10) The clerk shall test all electronic ballot counting devices and memory [cards]

14   *devices* in the possession of the town or city.

15   (11) Prior to placing the electronic ballot counting device or any memory [card]

16   *device* into service in an election, the moderator shall certify that there is evidence that pre-

17   election testing was conducted on each electronic ballot counting device and each memory [card]

18   *device* in the town or city clerk's possession, and that these ***ballot counting*** devices and [cards]

19   ***memory devices*** have passed the test.

20   7 New Paragraph; Electronic Ballot Counting Devices; Rules. Amend RSA 656:42 by inserting

21   after paragraph VIII the following new paragraph:

22   IX. Any electronic digital image of a marked ballot made by a ballot counting device,

23   whether stored on the device, on a removable memory device, or on a government computer, shall

24   be non-public and exempt from RSA 91-A.

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

26   following new section:

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

28   I. In a town or city that uses a ballot counting device approved by the ballot law commission

29   pursuant to RSA 656:40 and which prints an image of all write-in votes as part of the device's report

30   of votes cast, a moderator may use the printed images to count write-in votes in place of examining

31   each ballot to obtain the name of the person who received a write-in vote.

32   II. The moderator shall cause all write-in votes, whether viewed on the ballot or on the

33   print out, to be examined for write-in votes that are for a person whose name is printed on the

34   ballot as a candidate. Provided the voter did not overvote for that office, a write-in vote for a person

35   whose name is on the ballot, shall be counted as a vote for that candidate. The moderator shall

36   include that vote in the total of the number of votes cast for that candidate, adding votes by write-in

37   to votes by a marked oval.

1   III. A ballot where the voter marked the oval beside the name of a candidate whose name is

2 printed on the ballot and also wrote that same candidates name in as a write-in shall be counted as

3 one vote for that candidate. The moderator shall include that one vote in the total number of votes

4 cast for that candidate. The write-in shall not be counted separately as a write-in vote.

5   IV. If the moderator shall not use the device report of printed images of write-in votes to

6 fulfill the requirement for publicly announcing all persons receiving votes and the number of votes

7 that person received, the printed images shall be stored for future reference and kept in the

8 possession of the town or city clerk. If write in votes are tallied using the device report, the report

9 shall be marked "name on ballot" or "NOB" beside each write-in vote that was counted as a vote for

10 a candidate whose name was printed on the ballot.

11   V. If the device report is used to tally write-in votes, a copy of the report shall be preserved

12 with the ballots used at the election. The printed report showing the write-in votes in the voter's

13 handwriting shall be a non-public record, and shall be exempt from RSA 91-A. The moderator shall

14 also provide the clerk with a copy of the printed images of all write-in votes to be available as a non-

15 public record to assist with post-election reporting.

16   VI. For all state elections, if used in the ballot counting process, the moderator and the

17 clerk shall retain a copy of the printed images of all write-in votes to be available for reference if

18 needed to resolve questions regarding the return of votes. The copy shall be a non-public document

19 and shall be stored and used in a manner that limits the risk of exposing, through recognition of

20 handwriting, the candidate written in by any voter.

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

2019-1899s

AMENDED ANALYSIS

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