

SB 418-FN - VERSION ADOPTED BY BOTH BODIES

03/31/2022 1096s
21Apr2022... 1487h
4May2022... 1870h

2022 SESSION

22-3015
11/04

SENATE BILL ***418-FN***

AN ACT relative to verification of voter affidavits.

SPONSORS: Sen. Giuda, Dist 2; Sen. Bradley, Dist 3; Sen. French, Dist 7; Sen. Gannon, Dist 23; Rep. Howard, Belk. 8

COMMITTEE: Election Law and Municipal Affairs

ANALYSIS

This bill provides for verification of voter affidavits by establishing affidavit balloting.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to verification of voter affidavits.

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

1 1 Findings.

2 I. According to the secretary of state, over the past 45 years, New Hampshire has had 44
3 state elections that ended in a tie or in a one-vote victory. On average, that is almost once per year,
4 not including the 1974 U.S. Senate race that was won by 2 votes - the closest U.S. Senate race in
5 history. This clearly proves that just one improperly cast vote can adversely influence an election
6 each year. Every improperly cast vote invalidates one legal vote. In the 2016 general election, at
7 least 10 illegal ballots were cast by voters who admitted guilt and were prosecuted by the attorney
8 general and counted, including one woman who was caught voting in both Massachusetts and in
9 Plymouth, New Hampshire. She only paid a \$500 fine; hardly a deterrent. In that same election,
10 the attorney general's office, after extensive investigation, was unable to verify the identity of 230
11 qualified and domicile affidavit voters. Allowing unverified votes to count in an election enables the
12 corruption of New Hampshire's electoral process. This must be addressed immediately to restore the
13 integrity of New Hampshire elections.

14 II. Currently, New Hampshire law allows for votes to be cast and counted by signing an
15 affidavit, even when the voter fails to produce documents to prove his or her identity, or that he or
16 she is a New Hampshire citizen or an inhabitant of that town, city, ward, or district. Although these
17 laws do allow for the post-election investigation of these unverified ballots, this merely identifies
18 when unqualified votes have been cast. It does nothing to prevent the nullification of legitimate
19 votes by the casting, counting, and certification of illegitimate ballots.

20 2 New Section; Election Procedure; Affidavit Ballot. Amend RSA 659 by inserting after section
21 23 the following new section:

22 659:23-a Affidavit Ballots.

23 I. For all elections, if a voter on election day is registering to vote for the first time in New
24 Hampshire and does not have a valid photo identification establishing such voter's identification, or
25 does not meet the identity requirements of RSA 659:13, then such voter shall vote by affidavit ballot
26 pursuant to this section.

27 II. The authorized election official shall hand the affidavit ballot voter an affidavit voter
28 package and explain its use. The affidavit voter package shall be designed, produced, and
29 distributed by the secretary of state, and shall contain the following:

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1 (a) A prepaid U.S. Postal Service Priority Mail Express (overnight delivery) envelope
2 addressed to the secretary of state for the affidavit voter to return the affidavit verification letter
3 described in subparagraph (b) and any required missing documentation that necessitated voting by
4 affidavit ballot. The return address on this envelope shall be for the office of the secretary of state.

5 (b) An affidavit voter verification letter, in duplicate form, which lists all the documents
6 required to qualify to vote in the state of New Hampshire. The authorized election official shall
7 mark on both copies of the verification letter which qualifying documents were not provided, thereby
8 necessitating voting by affidavit ballot. One copy of the affidavit verification letter shall be given to
9 the voter; the other copy shall be retained by the authorized election official. The voter shall be
10 required to return their copy of the affidavit verification letter and a copy of any required
11 documentation to the secretary of state in the provided prepaid U.S. Postal Service envelope within 7
12 days of the date of the election in order for the ballot to be certified.

13 III. The moderator shall mark each affidavit ballot "Affidavit Ballot #___" sequentially,
14 starting with the number "1".

15 IV. All affidavit ballots shall be cast in person at the polling place, placed in a container
16 designated "Affidavit Ballots," and hand counted after polls have closed using a method prescribed
17 by the secretary of state for hand counting and confirmation of candidate vote totals. After
18 completion of counting, the moderator shall note and announce the total number of votes cast for
19 each candidate, and the total number of affidavit ballots cast in the election. No later than one day
20 after the election, the moderator shall forward all affidavit ballot verification letters to the secretary
21 of state using a secure means of transmission or delivery.

22 V. On the seventh day after the election, if an affidavit ballot voter has failed to return the
23 verification letter with the missing voter qualifying documentation to the secretary of state, either in
24 person or using the prepaid U.S. Postal Service Priority Mail Express Envelope, the secretary of
25 state shall instruct the moderator of the town, city, ward, or district in which the affidavit ballot was
26 cast to retrieve the associated numbered affidavit ballot and list on a tally sheet, by candidate or
27 issue, the votes cast on that ballot. The counting of votes on affidavit ballots identified by the
28 secretary of state as unqualified shall be conducted by the town, city, ward, or district using the
29 same methods of counting and observation utilized on the day of the election for hand counted
30 ballots. The votes cast on such unqualified affidavit ballots shall be deducted from the vote total for
31 each affected candidate or each affected issue.

32 VI. No later than 14 days after the election, any town, city, ward, or district in which any
33 affidavit ballots were cast, and not subsequently verified, shall provide to the secretary of state a
34 summary report, by race or ballot issue, of the total votes cast by the unqualified voters. The total
35 vote minus the unqualified affidavit ballot vote for each race or issue shall be the final vote to be
36 certified by the appropriate certifying authority.

1 VII. The names of affidavit voters whose verification letters are either not returned to the
2 secretary of state or which do not provide the required voter qualifying information shall be referred
3 by the secretary of state to the New Hampshire attorney general's office for investigation in
4 accordance with RSA 7:6-c.

5 VIII. Any written, electronic, or other information related to an affidavit voter who provides
6 the required information verifying their right to vote shall not be subject to disclosure under RSA 91-
7 A or any other law.

8 IX. All written documentation relating to affidavit ballots shall be delivered to the secretary
9 of state by local election officials in sealed packages using a secure means of transportation and
10 stored pursuant to RSA 659:95 through 659:103.

11 3 New Section; General Provisions for Recounts; Affidavit Ballots. Amend RSA 660 by inserting
12 after section 17 the following new section:

13 660:17-a Affidavit Ballots; Recounts. In any election or referendum, if the total number of
14 affidavit ballots submitted for any local, district, county, or statewide race or issue would, if counted
15 in favor of either candidate or position, alter the outcome of the election, the deadlines for filing
16 recount requests imposed by RSA 660:1, 660:7, 660:10, 660:12, and 660:13 shall be extended until
17 after the deadline for submitting affidavit verification materials in RSA 659:23-a. In such instance,
18 the secretary of state shall publish new deadlines for filing recounts.

19 4 Election Procedure; Obtaining a Ballot. Amend RSA 659:13, I(c) to read as follows:

20 (c)(1) If the voter does not have a valid photo identification, the ballot clerk shall **direct**
21 **the voter to see the supervisor of the checklist.**

22 (2) **The supervisor of the checklist shall review the voter's qualifications and**
23 **determine if the voter's identity can be verified.**

24 (3) **If the supervisor of the checklist cannot verify the voter's identity, the**
25 **supervisor of the checklist shall** inform the voter that he or she may execute a challenged voter
26 affidavit **and cast an affidavit ballot in accordance with RSA 659:23-a.** The voter shall receive
27 an explanatory document prepared by the secretary of state explaining the proof of identity
28 requirements. If the voter executes a challenged voter affidavit **and casts an affidavit ballot,** the
29 ballot clerk shall mark the checklist in accordance with uniform procedures developed by the
30 secretary of state.

31 ~~[(2)]~~ (4) If the voter executes a challenged voter affidavit **and casts an affidavit**
32 **ballot,** the moderator or the moderator's designee shall take a photograph of the voter and
33 immediately print and attach the photograph to ~~[, and thus make it a part of, the affidavit form.~~
34 ~~However, if a photograph was taken under RSA 654:12, then a notation shall be made on the~~
35 ~~challenged voter affidavit stating that the photograph is attached to the qualified voter affidavit or~~
36 ~~sworn statement on the general election day registration form]~~ **the duplicate copy of the affidavit**
37 **voter verification letter to be delivered to the secretary of state.** The photograph shall be 2

1 inches by 2 inches, or larger, and may be in color or in black and white. The moderator or his or her
2 designee who took the photograph and the voter shall then sign the challenged voter affidavit. The
3 moderator or designee shall delete the photograph from the camera in the presence of the voter. If
4 the moderator or his or her designee is unable to take the voter's photograph due to equipment
5 failure or other cause beyond the moderator's or his or her designee's reasonable control, the voter
6 may execute a challenged voter affidavit **and cast an affidavit ballot** without a photograph.

7 ~~[(3)]~~ **(5)** If the voter objects to the photograph requirement because of religious
8 beliefs, he or she may execute an affidavit of religious exemption in accordance with RSA 659:13-b,
9 which shall be attested to by an election officer and attached to the challenged voter affidavit.

10 ~~[(4)]~~ **(6)** The person entering voter information into the centralized voter registration
11 database shall cause the records to indicate when a voter has not presented a valid photo
12 identification and has executed a challenged voter affidavit **and cast an affidavit ballot**.

13 5 Voting Procedure; Obtaining a Ballot. Amend RSA 659:13, II(b) to read as follows:

14 (b) In addition to the forms of photo identification authorized in subparagraph (a), the
15 identification requirements of paragraph I may be satisfied by verification of the person's identity by
16 a moderator or supervisor of the checklist or the clerk of a town, ward, or city, provided that if any
17 person authorized to challenge a voter under RSA 659:27 objects to such verification, identifies the
18 reason for the objection in writing, and states the specific source of the information or personal
19 knowledge upon which the challenge of the photo identification is based, the voter shall be required
20 to execute a challenged voter affidavit as if no verification was made. ***When an election official
21 uses personal recognizance as a substitute for required documentation under this section,
22 the moderator or clerk shall print in the margin of the checklist, next to the name of the
23 voter so qualified, one of the following to identify the official who validated the voter: "P-x-
24 AB" where "P" indicates personal recognizance; "x" shall be "M" for moderator or "C" for
25 clerk; and AB are the first and last initials of the moderator or clerk. By initialing the
26 checklist, the moderator or clerk personally affirms, under penalty of perjury, the identity
27 of the voter they are qualifying to vote.***

28 6 New Subparagraphs; Voting Procedure; Obtaining a Ballot. Amend RSA 659:13, II by
29 inserting after subparagraph (c) the following new subparagraphs:

30 (d) The secretary of state shall provide training for supervisors of the checklist on how
31 the nonpublic data in the statewide centralized voter registration database may be used to satisfy
32 voter identification requirements.

33 (e) The secretary of state shall develop and make available an informational pamphlet
34 explaining the procedure established in RSA 260:21 for obtaining a picture identification card for
35 voter identification purposes only.

36 7 Effective Date. This act shall take effect January 1, 2023.

SB 418-FN- FISCAL NOTE
 AS AMENDED BY THE HOUSE (AMENDMENT #2022-1487h)

AN ACT relative to verification of voter affidavits.

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	\$48,000	\$0	\$72,000
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	\$0	Indeterminable Increase

METHODOLOGY:

This bill establishes affidavit balloting for voters who are registering to vote in New Hampshire for the first time and who do not have a valid photo identification. The affidavit balloting would include a serial numbered ballot to be used for voting at the municipality. The voter would also receive a voter packet containing a USPS Priority Mail Express (overnight delivery) envelope and an affidavit voter verification letter, in duplicate form. The voter is to leave one copy of the verification letter with the authorized election official and return their affidavit verification letter with required documentation, in the provided envelope, within 7 days of the election to the Secretary of State's Office. If an affidavit voter fails to send the required documentation to the Secretary of State within 7 days, the Secretary of State would notify local election officials, who would retrieve the voter's ballot and deduct it from the election totals and votes contained on the ballot.

The Department of State indicates there would be an increased expense to the General Fund in FY 2023 and FY 2025 of \$48,000 and \$72,000 respectively. The Department assumes they would need 3,000 packets, accounting for both the primary and general elections to ensure a sufficient amount of packets at each polling locations. The cost of the preparation of the packets is estimated to be \$5 per packet equating to \$15,000. The Department assumes in FY 2023 there will be the same amount of voters using the challenge voter affidavit process due to

lack of ID as the November 2020 election (733) and an additional 50% for the primary (367). The Department is not able to separate out how many of the voters in the November 2020 election were registering to vote for the first time in NH versus those who were already registered and didn't have an ID on election day, so the Department is making the assumption that all voters using the challenged voter affidavit were first time voters. The postage for each returned envelope is \$26.95. Multiplying the 1,100 voters by the postage cost rounds to an estimated \$30,000 for postage cost. The Department also would incur \$3,000 in overtime pay. The Department assumes in FY 2025, because it is a presidential year, the expenses will increase by 1.5 times.

The New Hampshire Municipal Association (NHMA) states there could be a small indeterminable fiscal impact on local expenditures. The NHMA states due to the potential increase in hand counted ballots and the need to take additional action with respect to those ballots after elections the expenditure could increase. The expenditures will vary depending on the municipality.

AGENCIES CONTACTED:

Department of State and New Hampshire Municipal Association