

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
SOUTHERN DISTRICT

SUPERIOR COURT

Docket No. 226-2022-CV-00233

603 Forward, et al.

v.

David M. Scanlan, et al.

and

Manuel Espitia, Jr., et al.

v.

David Scanlan, et al.

**DEFENDANTS' SUPPLEMENTAL BRIEF
PURSUANT TO COURT'S 6/26/23 ORDER**

The Defendants, David M. Scanlan, in his official capacity as the New Hampshire Secretary of State, and John M. Formella, in his official capacity as the New Hampshire Attorney General, through counsel, submit the following supplemental brief regarding the meaning of SB 418, pursuant to the Court's Order on June 26, 2023.

I. **Introduction:**

1. The Plaintiffs brought a complaint alleging that SB 418 violates the New Hampshire Constitution and requesting the Court enjoin the Defendants from enforcing SB 418. The Plaintiffs allege, and the Defendants agree, that SB 418 requires a person to cast an "affidavit ballot" if that person registers to vote for the first time in New Hampshire, on election day, and without proper identification.¹ The Defendants moved to dismiss, arguing as relevant here that the Plaintiffs lack standing because they have not

¹ See Complaint, §IV.

demonstrated that they would be first time voter registrants who could be subject to SB 418's affidavit ballot requirement.²

2. Even though the Parties appear to be in agreement regarding the scope of which voters are subject to SB 418's affidavit ballot requirement, the Court issued an Order explaining that the Court interprets SB 418's affidavit ballot requirement as more broadly applying to all voters who seek to vote without meeting the identity requirements of RSA 659:13, and the Court ordered the Parties to brief the issue regarding the proper interpretation of SB 418.

3. Construing the language of SB 418 according to its plain and ordinary meaning, and reading the statute as a whole, SB 418 creates an affidavit ballot requirement for persons who register to vote in this State for the first time on election day without proper identification or otherwise meeting the identity requirements of RSA 659:13—not to all voters who do not meet the identity requirements of RSA 659:13. To the extent that the meaning of SB 418 is ambiguous, the legislative history of SB 418 supports the Defendants' interpretation.

II. **Background of SB 418:**

4. SB 418, as originally introduced, created a new section RSA 659:23-a, which provided:

For all elections, if a voter seeks to cast a ballot and such voter's name is not on the voter registration checklist for that town, city, ward, or district, or if such voter does not have a valid photo identification establishing such voter's identity and domicile in that town, city, ward, or district, then such voter shall vote by affidavit ballot.

A copy of the as introduced version of SB 418 is attached as **Exhibit A**. The Methodology section of SB 418 provided that “This bill establishes affidavit balloting for

² See generally State's Motion to Dismiss.

voters who are not registered on the checklist or who do not have a valid photo identification.” Ex. A, at 004.

5. Consistent with SB 418’s as-introduced language for RSA 659:23-a, SB 418 provided that RSA 659:13, I(c) would be amended to provide that “If the voter does not have a valid photo identification, the ballot clerk shall inform the voter that he or she may execute a challenged voter affidavit **and cast an affidavit ballot in accordance with RSA 659:23-a.**” Ex. A, at 003 (language added to the statute appears in bold).

6. Thus, as introduced, SB 418 required two types of voters to vote by affidavit ballot: (1) every voter whose name was not on the checklist on election day, regardless of whether that voter had proper identification; and (2) every voter who did not have proper photo identification on election day.

7. On March 31, 2022, SB 418 was amended to require two different types of voters to vote by affidavit ballot: (1) each voter who “on election day does not have a valid photo identification establishing such voter’s identification or does not meet the identity requirements of RSA 659:13”; and (2) each “voter on election day [who] is registering to vote for the first time in New Hampshire, and does not possess proper documentation ... establishing citizenship and establishing domicile.” A copy of SB 418, as amended on March 31, 2022, is attached as **Exhibit B**. The March 31, 2022, version of SB 418 proposed to amend RSA 659:13, I, to provide that if a voter does not have valid identification and the supervisor of the checklist cannot verify their identity, the voter must “cast an affidavit ballot in accordance with RSA 659:23-a.” Ex. B, at 003.

8. On April 21, 2022, SB 418 was again amended in a manner that changed which voters were subject to SB 418’s affidavit ballot requirement. Specifically, SB 418

amended proposed RSA 659:23-a to provide: “For all elections, if a voter on election day is registering to vote for the first time in New Hampshire and does not have a valid photo identification establishing such voter's identification, or does not meet the identity requirements of RSA 659:13, then such voter shall vote by affidavit ballot pursuant to this section.” A copy of SB 418, as amended on April 21, 2022, is attached as **Exhibit C**. Also on April 21, 2022, the Legislature amended the Methodology section of SB 418 to read “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.” Ex. C, at 004 (emphasis added).

9. Thus, the Legislature’s clear intent in amending SB 418 on April 21, 2022, was to require affidavit ballot voting only for voters who on election day register to vote for the first time and neither had proper photo identification, nor otherwise met the identity requirements of RSA 659:13. See RSA 659:13 (authorizing a moderator, supervisor of the checklist, or clerk to verify a voter’s identity by personal recognizance instead of through identity documentation).

10. The April 21, 2022, amendment to SB 418 clearly stated the scope of voters who were subject to the new affidavit ballot requirement in RSA 659:23-a: voters registering to vote for the first time in New Hampshire on election day, with no photo identification, and where election officials are unable to otherwise verify their identity pursuant to RSA 659:13. However, that amendment neglected to similarly amend the proposed language for RSA 659:13, I, which continued to more broadly provide that if a voter does not have valid identification and the supervisor of the checklist cannot verify their identity, the voter must “cast an affidavit ballot in accordance with RSA 659:23-a.” See Ex. C at 003.

11. Although remnants of the original bill language left some contradiction between SB 418's language in RSA 659:23-a and its methodology section on one hand, and SB 418's language in RSA 659:13, I, on the other hand, the legislative comments after the April 21, 2022, amendments confirm that SB 418's affidavit ballot requirement was not intended to apply to all voters who seek to vote on election day without proper photo identification or meeting the personal recognizance identity requirement of RSA 659:13

12. Legislative comments on May 4, 2022, demonstrate that SB 418 was not intended to apply to all voters who lack proper identification on election day. On May 4, 2022, Representative Gerald Griffin of the House Finance Committee introduced SB 418 to the full House of Representatives. Speaking for the Majority of the Finance Committee, Representative Griffin stated: "The bill only applies to those registering for the first time on election day without proof of his/her identity." See **Exhibit D**, at 002 (House Journal 2022 Session, Vol. 44, No. 11 (May 4, 2022) (emphasis added)).

13. Notably, the Methodology section of the May 4, 2022, version of SB 418 included an estimated increased expense to the General Fund for the upcoming primary and general elections:

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.

(Emphasis added). A copy of the May 4, 2022, version of SB 418 is attached as

Exhibit E.

14. SB 418 was subsequently enacted into law. See 2022 Laws, Ch. 239.

15. On February 10, 2023, the Secretary of State issued guidance regarding SB 418 and affidavit ballots. Notably, the Secretary of State provided guidance that a voter is required to use an affidavit ballot “only if all of the following apply”: (1) applicant is registering on election day; (2) applicant is a first time registrant in New Hampshire; (3) applicant does not have valid photo identification to provide identity; and (4) applicant does not meet the identity requirements of RSA 659:13; RSA 659:13, I(c); and RSA 659:23-a. See Exhibit F. In other words, the Secretary of State’s guidance did not interpret SB 418 as requiring all voters who do not meet the identity requirements of RSA 659:13 to vote by affidavit ballot.

III. **SB 418’s affidavit ballot requirement applies only to certain voters who are registering to vote for the first time in New Hampshire on election day.**

A. The Court should decline to reach this issue:

16. At the outset, the Defendants submit that this Court should decline to reach this issue. No Party in this case has argued that SB 418 should be interpreted as broadly requiring any voter who completes a challenged voter affidavit to vote by affidavit ballot. In the absence of such a dispute, there is no need for the Court to reach this issue. Rather, even if the Court disagrees with the Parties’ interpretations of SB 418, the Court can “assume without deciding” that the Parties’ interpretation of SB 418 is correct.

B. Standard of Review:

17. To the extent that the Court decides to reach this issue, determining the meaning of SB 418 requires the Court to engage in statutory interpretation. Statutory interpretation is a question of law. Hogan v. Pat’s Peak Skiing, LLC, 168 N.H. 71, 73 (2015). The Court first looks to the language of the statute itself, and, if possible, construes that language according to its plain and ordinary meaning. Id. The Court

construes all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result. Id. The Court does not consider words and phrases in isolation, but rather within the context of the statute as a whole. Id. Similarly, to better discern the Legislature's intent, the Court interprets statutory language in light of the policy or purpose sought to be advanced by the statutory scheme. See id.

18. To the extent that two statutes conflict, the more specific statute controls over the general statute. See Casey v. N.H. Secy. of State, 173 N.H. 266, 280 n.1 (2020).

19. Where a statute is ambiguous or subject to more than one reasonable interpretation, the Court reviews legislative history to aid its analysis. See Franklin v. Town of Newport, 151 N.H. 508, 510 (2004).

C. Reading SB 418 as a whole, RSA 659:23-a's affidavit ballot process applies only to persons registering to vote for the first time in New Hampshire on election day.

20. SB 418 added a new section RSA 659:23-a, titled "Affidavit Ballots," which provides that "if a voter on election day is registering to vote for the first time in New Hampshire and does not have a valid photo identification establishing such voter's identification, or does not meet the identity requirements of RSA 659:13, then such voter shall vote by affidavit ballot pursuant to this section."

21. According the plain and ordinary meaning to the words of RSA 659:23-a, the affidavit ballot procedure applies to a voter who is registering to vote for the first time in New Hampshire, on election day, and neither has a valid photo identification nor meets the identity requirements of RSA 659:13. See RSA 659:13 (requiring all voters to either (1) provide proof of identity in the form of a valid photo identification, in the form of a driver's license, a non-driver identification card, a U.S. armed services identification card, a qualifying student identification card, a challenged voter affidavit in accordance

with RSA 659:13, I(c), or another photo identification determined to be legitimate by election officials; or (2) provide proof of identify through “personal recognizance,” meaning verification of the person’s identity by a moderator, supervisor of the checklist, or clerk).

22. In the Court’s Order, the Court suggests that the language “or does not meet the identity requirements of RSA 659:13,” read in conjunction with RSA 659:13, is intended to subject all voters who do not meet the identity requirements of RSA 659:13 to the affidavit ballot procedure. Order, at 4. The Court reasons that, if not, the language “or does not meet the identity requirements of RSA 659:13” would be left “without any real meaning, as any voter who lacks photo identification when registering would also not meet the identity requirements of RSA 659:13.” Order, at 4.

23. To the contrary, a voter who is registering for the first time in New Hampshire on election day, but who lacks photo identification, can still meet the identity requirements of RSA 659:13. Specifically, RSA 659:13 allows a voter to establish their identity by “personal recognizance,” meaning a qualifying election official is able to personally identify the voter.³ Thus, interpreting RSA 659:23-a as applying solely to first time New Hampshire registrants, who neither have valid photo identification nor can prove their identity through the alternative procedure in RSA 659:13, accords with and gives effect to every provision in RSA 659:13.

24. Furthermore, the Court’s suggested interpretation would leave the language “a voter on election day is registering to vote for the first time in New Hampshire and does

³ It is not hard to think of a hypothetical first time New Hampshire registrant who may lack photo identification but nevertheless be able to have their identity verified through an election official’s personal recognizance of the voter. For example, the election official could be the voter’s elementary or high school teacher, sports coach, guidance counselor, pastor, landlord, neighbor, or employer.

not have a valid photo identification establishing such voter's identification" with no effect. If the phrase "or does not meet the identity requirements of RSA 659:13" is read as an independent class of voters who are subject to the affidavit ballot procedure, that class would necessarily include every first-time voter registrant who lacks identification. Thus, there would be no need for RSA 659:23-a to separately require "voters who are registering to vote for the first time in New Hampshire" without proper identification to vote by affidavit ballot.

25. To give effect to all of the language in RSA 659:23-a, I, the statute must be read as applying only to voters who are registering for the first time in New Hampshire on election day.

D. RSA 659:13, as amended by SB 418, conflicts both internally and with RSA 659:23-a when the two statutes are read in conjunction.

26. The Court reasons in its Order that RSA 659:13, I, conflicts with the Parties' interpretation of RSA 659:23-a because RSA 659:13, I, appears to require all voters who cannot sufficiently establish their identity to vote by affidavit ballot, regardless of whether the voter is registering to vote in New Hampshire for the first time on election day. Specifically, the Court notes that RSA 659:13, I, provides that a person must "present proof of [their] identity meeting the requirements of paragraph II" to receive a regular ballot and, if the voter "does not have a valid photo identification" and the "supervisor of the checklist cannot verify the voter's identity," the voter is informed that they instead "may execute a challenged voter affidavit and cast an affidavit ballot in accordance with RSA 659:23-a."

27. However, RSA 659:13, read as a whole, is internally inconsistent and therefore ambiguous regarding who must vote by affidavit ballot.

28. RSA 659:13, I(b) provides that the ballot clerk “shall give” a regular ballot to every voter who “present[s] proof of his or her identity meeting the requirements of paragraph II.” One of the ways that a person can establish their identity under paragraph II is by providing “[a] challenged voter affidavit in accordance with subparagraph I(c).” Thus, if a person establishes their identity under RSA 659:13, II via a challenged voter affidavit, RSA 659:13, I(b) entitles that person to a regular ballot. However, circularly, RSA 659:13, II, requires a challenged voter affidavit to be submitted in accordance with 659:13, I(c), which appears to require that voter to vote by affidavit ballot not regular ballot.

29. In addition to being internally inconsistent and ambiguous, RSA 659:13 would conflict with the plain language of RSA 659:23-a to the extent that RSA 659:13 is read to require all voters who establish their identity via a challenged voter affidavit to vote by affidavit ballot. To the extent that these two statutes conflict, RSA 659:23-a controls because it narrowly addresses the specific affidavit ballot procedure whereas RSA 659:13 more broadly addresses the general procedure for obtaining a ballot. See Casey, 173 N.H. at 280 n.1. (“To the extent two statutes conflict, the more specific statute controls over the general statute.” (quotation omitted)).

30. Therefore, reading SB 418 as a whole, only voters who are registering for the first time in New Hampshire on election day without proper identification are subject to RSA 659:23-a’s affidavit ballot requirement.

E. The legislative history of SB 418 makes it clear that the Legislature did not intend for the affidavit ballot procedure to apply to every voter who must execute a challenged voter affidavit to establish their identity.

31. To the extent that the Court construes RSA 659:13 is ambiguous, both when read in isolation and when read in conjunction with RSA 659:23-a, the Court must consider

the legislative history of SB 418 and when interpreting the statutes. As explained in more detail below, the legislative history of SB 418 shows that the scope of the affidavit ballot requirement changed during the legislative process. Originally, the affidavit ballot requirement broadly applied to all unregistered voters and all registered voters lacking photo identification. However, the affidavit ballot requirement was amended to more narrowly apply to voters who were registering to vote for the first time in New Hampshire. In making these amendments that narrowed the scope of the affidavit ballot requirement in SB 418, the Legislature appears to have inadvertently failed to similarly amend the less-specific proposed language in RSA 659:13 to accord with the narrowed scope of SB 418, as amended.

32. SB 418's as-introduced language for RSA 659:23-a required two categories of voters to vote by affidavit ballot: (1) a voter who is not on the registration checklist, regardless of whether the voter brings proper photo identification (i.e., a same-day registrant); and (2) a voter who does not have valid photo identification, regardless of whether that voter was previously registered to vote. See Ex. A, at #; see also Ex. A, at # (the Legislature's methodology section stated that the purpose of SB 418 was to "establish[] affidavit balloting for voters who are not registered on the checklist or who do not have a valid photo identification."). Consistent with this broad affidavit ballot requirement, SB 418, as introduced, provided that RSA 659:13 would be amended to provide that "[i]f the voter does not have a valid photo identification, the ballot clerk shall inform the voter that he or she may execute a challenged voter affidavit and cast an affidavit ballot in accordance with RSA 659:23-a." Ex. A, at 003.

33. On March 31, 2022, SB 418 was amended to require all voters who do not have photo identification or otherwise meet the identity requirements of RSA 659:13, and all first time New Hampshire registrants who lack documentation of citizenship and domicile, to vote by affidavit ballot. Ex. B, at 002. The March 31, 2022, version of SB 418 contained the proposed amended language of RSA 659:13, I(c) that would ultimately be enacted into law, which language is consistent with the dual affidavit ballot requirement set forth in the March 31, 2022, version of SB 418's proposed language for RSA 659:23-a. See Ex. B, at 003.

34. On April 21, 2022, SB 418 was amended again, this time to provide: "For all elections, if a voter on election day is registering to vote for the first time in New Hampshire and does not have a valid photo identification establishing such voter's identification, or does not meet the identity requirements of RSA 659:13, then such voter shall vote by affidavit ballot pursuant to this section." Ex. C, at 002. In other words, the April 21, 2022, amendment changed the proposed language of RSA 659:23-a to remove the requirement that all voters without photo identification must cast affidavit ballots.

35. Although the Legislature did not further amend SB 418's proposed language of RSA 659:13, I(c), the plain language of RSA 659:23-a, as amended, and the methodology section of SB 418 made it clear that the affidavit ballot requirement was now intended to apply only to voters registering to vote for the first time in New Hampshire without photo identification or identification by personal recognizance of election officials. The methodology section of the May 4, 2022, version of SB 418 expressly confirms that the affidavit ballot requirement was intended to apply solely to first time New Hampshire voter registrations—not to every voter executing a challenged voter affidavit. See Ex. E,

at 005 (using the total number of challenged voter affidavits from the November 2020 election to estimate the fiscal impact of producing affidavit ballots, but noting that 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” (emphasis added)).

36. Moreover, the legislative comments from Representative Griffin on May 4, 2022, when SB 418 was introduced to the full House of Representatives, confirm that the intent of the amended version of SB 418 was not to broadly impose the affidavit ballot requirement solely on all voters who lack proper identification on election day. See Ex. D, at 002.

37. This legislative history demonstrates that the Legislature clearly intended that the April 21, 2022, amended version of SB 418 would impose an affidavit ballot requirement solely on first time New Hampshire registrants who lack proof of identification. In the context of this legislative history and the original broader scope of SB 418, it becomes apparent that SB 418’s revisions to RSA 659:13, I(c) are remnants of the original, broader version of SB 418 that the Legislature inadvertently left in the bill. Because that language from RSA 659:13, I(c) is contrary to the express language of RSA 659:23-a, the amended SB 418 methodology statement regarding the purpose of the bill, the amended SB 418 methodology statement regarding fiscal impact, and express statements of scope from members of the Legislature, the Court should not interpret SB 418 in a manner that subjects all voters who use a challenged voter affidavit to establish their identity on

election day to cast an affidavit ballot where this result is clearly contrary to the intent of the Legislature.

IV. **Conclusion:**

38. Based on SB 418's plain language, construing the statute as a whole, SB 418's affidavit ballot process applies only to voters who are registering to vote for the first time in New Hampshire. Even if the Court finds SB 418 to be ambiguous as to whether the statute applies more broadly to all voters who lack identification on election day, SB 418's legislative history makes it clear that the affidavit ballot process applies only to voters who are registering to vote for the first time in New Hampshire on election day.

Respectfully submitted,

DAVID SCANLAN,
SECRETARY OF STATE and

JOHN FORMELLA,
ATTORNEY GENERAL

By their attorneys,

JOHN FORMELLA
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July 17, 2023

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was transmitted by electronic filing, to all counsel of record.

July 17, 2023

/s/ Brendan Avery O'Donnell
Brendan Avery O'Donnell

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EXHIBITS
DEFENDANTS' SUPPLEMENTAL BRIEF

Exhibit A – SB 418, as introduced – Ex A 001 – Ex A 004

Exhibit B – SB 418, as amended March 31, 2022 – Ex B 001 – Ex B 005

Exhibit C – SB 418, as amended April 21, 2022 – Ex C 001 – Ex C 005

Exhibit D – House Journal 2022 Session, Vol. 44, No. 11 (May 4, 2022) – Ex D 001 – Ex D 004

Exhibit E – SB 418, as amended May 4, 2022 – Ex E 001 – Ex E 005

Exhibit F – Secretary of State's February 10, 2023, guidance regarding SB 418 and affidavit ballots – Ex F 001 – Ex F 010

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EXHIBIT

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SB 418-FN - AS INTRODUCED

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 struck through]~~

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

22-3015

11/04

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 Findings.

I. According to the secretary of state, over the past 45 years, New Hampshire has had 44 elections that ended in a tie or in a one-vote victory. On average, that is almost once per year. This clearly proves that just one improperly cast vote can adversely influence an election each year. Every improperly cast vote also invalidates one legal vote. In the 2016 general election, one woman was caught voting in both Massachusetts and in Plymouth, New Hampshire. She only paid a \$500 fine; hardly a deterrent. In that same election, the attorney general's office, after extensive investigation, was unable to verify the identity of 66 domicile affidavit voters and 164 qualified affidavit voters. To turn a blind eye to this level of uncertainty does a grave disservice to both the electoral process of the state of New Hampshire and its citizens. Something must be done, immediately.

II. Currently, New Hampshire law allows for votes to be cast and counted, even when the voter fails to produce documents to prove his or her identity, or that he or she is a New Hampshire citizen or inhabitant of that town, city, ward, or district. Although current New Hampshire laws do allow for the post-election investigation of these voting attempts, all this does is identify when unqualified votes have been cast and allowed to nullify legitimate votes. It does nothing to prevent the damage in the first place; that being the casting and counting of illegitimate votes.

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

659:23-a Affidavit Ballots.

I. For all elections, if a voter seeks to cast a ballot and such voter's name is not on the voter registration checklist for that town, city, ward, or district, or if such voter does not have a valid photo identification establishing such voter's identity and domicile in that town, city, ward, or district, then such voter shall vote by affidavit ballot.

II. The registering official at the polling place shall hand the affidavit ballot voter an affidavit voter package and explain its use. The affidavit voter package shall be designed, produced, and distributed by the secretary of state, and shall contain the following:

(a) A serialized affidavit voter ballot of a different color to distinguish it from regular ballots, with a serialized tear-off strip on the bottom. The tear-off strip shall contain both the serial number and the name and address of the affidavit voter. All such strips shall be mailed by the local election officials to the secretary of state the day after the election using registered mail, return receipt requested.

(b) A prepaid Federal Express envelope addressed to the secretary of state for the affidavit voter to return the affidavit verification page described in subparagraph (c) and missing documentation to the secretary of state. The return address on this envelope shall also be for the secretary of state.

(c) An affidavit voter verification page which lists the specific documents required to qualify to vote in the state of New Hampshire. The election official registering the affidavit voter shall mark on the verification page which identification requirements were fulfilled and which identification requirements were not fulfilled and thereby required affidavit voting.

The voter shall be required to return a copy of the affidavit verification page and any required documentation in the provided prepaid Federal Express envelope within 10 days of the date of the election in order for the ballot to be certified.

III. Affidavit ballots shall be of a different color, distinguishing them from regular non-affidavit ballots, and shall have a unique serial number assigned to the ballot. Each affidavit voter ballot shall have a tear-off strip containing the name and address of the affidavit voter and the serial number of the ballot which they cast.

IV. All affidavit ballots shall be cast in person at the polling place. After the close of polls on election day, all affidavit ballots shall be hand counted and included in the vote totals announced by the moderator. The total number of affidavit ballots shall also be noted.

V. If the affidavit voter fails to return a satisfactorily completed verification letter with the missing documentation within the allotted time frame, the secretary of state shall instruct the town, city, ward, or district in which the affidavit vote was cast to retrieve the serialized ballot and deduct from the election totals the votes contained on the serialized ballot. The counting of votes on those serialized affidavit ballots identified by the secretary of state as invalid shall be conducted by the town, city, ward, or district using the same methods of counting and observation utilized on the day of the election for non-affidavit ballots.

VI. No later than 14 days after the election, the town, city, ward, or district shall provide a summary report with its aggregated affidavit vote reductions to the secretary of state. This total shall be the final official vote count to be certified by the appropriate certifying authority.

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

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

IX. No affidavit ballots, regardless of whether qualified or unqualified, shall be subject to disclosure under RSA 91-A or any other law.

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

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

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

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

(c)(1) If the voter does not have a valid photo identification, the ballot clerk shall inform the voter that he or she may execute a challenged voter affidavit **and cast an affidavit ballot in accordance with RSA 659:23-a**. The voter shall receive an explanatory document prepared by the secretary of state explaining the proof of identity requirements. If the voter executes a challenged voter affidavit **and casts an affidavit ballot**, the ballot clerk shall mark the checklist in accordance with uniform procedures developed by the secretary of state.

(2) If the voter executes a challenged voter affidavit **and casts an affidavit ballot**, the moderator or the moderator's designee shall take a photograph of the voter and immediately print and attach the photograph to, and thus make it a part of, the affidavit form. However, if a photograph was taken under RSA 654:12, then a notation shall be made on the challenged voter affidavit stating that the photograph is attached to the qualified voter affidavit or sworn statement on the general election day registration form. The photograph shall be 2 inches by 2 inches, or larger, and may be in color or in black and white. The moderator or his or her designee who took the photograph and the voter shall then sign the challenged voter affidavit. The moderator or designee shall delete the photograph from the camera in the presence of the voter. If the moderator or his or her designee is unable to take the voter's photograph due to equipment failure or other cause beyond the moderator's or his or her designee's reasonable control, the voter may execute a challenged voter affidavit **and cast an affidavit ballot** without a photograph.

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

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

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

(b) In addition to the forms of photo identification authorized in subparagraph (a), the identification requirements of paragraph I may be satisfied by verification of the person's identity by a moderator or supervisor of the checklist or the clerk of a town, ward, or city, provided that if any person authorized to challenge a voter under RSA 659:27 objects to such verification, identifies the reason for the objection in writing, and states the specific source of the information or personal knowledge upon which the challenge of the photo identification is based, the voter shall be required to execute a challenged voter affidavit **and cast an affidavit ballot** as if no verification was made.

6 Effective Date. This act shall take effect upon its passage.

LBA

22-3015

Redraft 12/23/21

**SB 418-FN- FISCAL NOTE
AS INTRODUCED**

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	Indeterminable Increase	Indeterminable	Indeterminable
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	Indeterminable	Indeterminable

METHODOLOGY:

This bill establishes affidavit balloting for voters who are not registered on the checklist or who do not have a valid photo identification. The affidavit balloting would include a ballot in a different color than other ballots. It would contain a serialized tear-off strip and would require local election officials to mail the strips to the Secretary of State using registered mail and return receipt requested.

The Department of State indicates there would be an indeterminable increase in General Fund expenditures. The increase would be due to printing costs, mailing costs and potential increased staffing costs. The Secretary of State also notes they would be required to mail and process the new voter packet.

The New Hampshire Municipal Association (NHMA) states there would be an indeterminable fiscal impact on local expenditure. The NHMA states they are unsure if municipalities or Department of State would be responsible for the new ballots and the mailing paraphernalia. They explain there could also be an increase in staffing expenditures on election days due to the new requirements.

AGENCIES CONTACTED:

Department of State and New Hampshire Municipal Association

EXHIBIT

B

RETRIEVED FROM DEMOCRACYDOCKET.COM

SB 418-FN - AS AMENDED BY THE SENATE

03/31/2022 1096s

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 struck through]~~

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

03/31/2022 1096s 22-3015

11/04

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 Findings.

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

II. Currently, New Hampshire law allows for votes to be cast and counted by signing an affidavit, even when the voter fails to produce documents to prove his or her identity, or that he or she is a New Hampshire citizen or an inhabitant of that town, city, ward, or district. Although these laws do allow for the post-election investigation of these unverified ballots,

this merely identifies when unqualified votes have been cast. It does nothing to prevent the nullification of legitimate votes by the casting, counting, and certification of illegitimate ballots.

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

659:23-a Affidavit Ballots.

I.(a) For all elections, if a voter on election day does not have a valid photo identification establishing such voter's identification or does not meet the identity requirements of RSA 659:13, then such voter shall vote by affidavit ballot pursuant to this section.

(b) For all elections, if a voter on election day is registering to vote for the first time in New Hampshire, and does not possess proper documentation, as defined in statute, establishing citizenship and establishing domicile in that town, city, ward, or district, then such voter shall vote by affidavit ballot pursuant to this section.

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

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

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

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

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

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

VI. No later than 14 days after the election, any town, city, ward, or district in which any affidavit ballots were cast, and not subsequently verified, shall provide to the secretary of state a summary report, by race or ballot issue, of the total votes

cast by the unqualified voters. The total vote minus the unqualified affidavit ballot vote for each race or issue shall be the final vote to be certified by the appropriate certifying authority.

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

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

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

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

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

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

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

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

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

~~[(2)]~~ ***(4) If the voter executes a challenged voter affidavit and casts an affidavit ballot,*** the moderator or the moderator's designee shall take a photograph of the voter and immediately print and attach the photograph to ~~[- and thus make it a part of, the affidavit form. However, if a photograph was taken under RSA 654:12, then a notation shall be made on the challenged voter affidavit stating that the photograph is attached to the qualified voter affidavit or sworn statement on the general election day registration form]~~ ***the duplicate copy of the affidavit voter verification letter to be delivered to the secretary of state.*** The photograph shall be 2 inches by 2 inches, or larger, and may be in color or in black and white. The moderator or his or her designee who took the photograph and the voter shall then sign the challenged voter affidavit. The moderator or designee shall delete the photograph from the camera in the presence of the voter. If the moderator or his or her designee is unable to take the voter's photograph due to equipment failure or other cause beyond the moderator's or his or her designee's reasonable control, the voter may execute a challenged voter affidavit ***and cast an affidavit ballot*** without a photograph.

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

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

an affidavit ballot.

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

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

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

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

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

7 Effective Date. This act shall take effect upon its passage.

LBA
22-3015
Redraft 12/23/21

**SB 418-FN- FISCAL NOTE
AS INTRODUCED**

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	Indeterminable Increase	Indeterminable	Indeterminable
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	Indeterminable	Indeterminable

METHODOLOGY:

This bill establishes affidavit balloting for voters who are not registered on the checklist or who do not have a valid photo identification. The affidavit balloting would include a ballot in a different color than other ballots. It would contain a serialized tear-off strip and would require local election officials to mail the strips to the Secretary of State using registered mail and return receipt requested.

The Department of State indicates there would be an indeterminable increase in General Fund expenditures. The increase would be due to printing costs, mailing costs and potential increased staffing costs. The Secretary of State also notes they would be required to mail and process the new voter packet.

The New Hampshire Municipal Association (NHMA) states there would be an indeterminable fiscal impact on local expenditure. The NHMA states they are unsure if municipalities or Department of State would be responsible for the new ballots and the mailing paraphernalia. They explain there could also be an increase in staffing expenditures on election days due to the new requirements.

AGENCIES CONTACTED:

Department of State and New Hampshire Municipal Association

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EXHIBIT

C

RETRIEVED FROM DEMOCRACYDOCKET.COM

SB 418-FN - AS AMENDED BY THE HOUSE

03/31/2022 1096s
21Apr2022... 1487h

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 struck through~~.
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
03/31/2022 1096s
21Apr2022... 1487h 22-3015
11/04

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 Findings.

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

II. Currently, New Hampshire law allows for votes to be cast and counted by signing an affidavit, even when the voter fails to produce documents to prove his or her identity, or that he or she is a New Hampshire citizen or an inhabitant of that

town, city, ward, or district. Although these laws do allow for the post-election investigation of these unverified ballots, this merely identifies when unqualified votes have been cast. It does nothing to prevent the nullification of legitimate votes by the casting, counting, and certification of illegitimate ballots.

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

659:23-a Affidavit Ballots.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The moderator or his or her designee who took the photograph and the voter shall then sign the challenged voter affidavit. The moderator or designee shall delete the photograph from the camera in the presence of the voter. If the moderator or his or her designee is unable to take the voter's photograph due to equipment failure or other cause beyond the moderator's or his or her designee's reasonable control, the voter may execute a challenged voter affidavit ***and cast an affidavit ballot*** without a photograph.

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

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

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

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

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

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

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

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

LBA
22-3015
Amended 4/12/22

SB 418-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2022-1096s)

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	\$235,000	\$0	\$450,000
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 not registered on the checklist or 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 10 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 10 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 increase in expense to the General Fund in FY 2023 and FY 2025 of \$235,000 and \$450,000 respectively. The Department assumed they would need 12,000 packets, accounting for both the primary and general elections to ensure a sufficient amount of packets at each polling location. The cost of the preparation of the packets is estimated to be \$5 per packet equating to \$60,000. The Department assumes in FY 2023 there will be the same amount of voters using the affidavit process as the November 2020 election (4,244) and an additional 50% for the primary (2,122). The postage for each returned envelope is \$26.95. Multiplying the 6,366 voters by the postage cost rounds to an estimated \$170,000 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 be doubled.

The New Hampshire Municipal Association (NHMA) states there would be an indeterminable fiscal impact on local expenditures. The NHMA states they could incur additional expenditures to instruct voters on the affidavit ballot and sending of documentation to the Secretary of State, hand counting all affidavit ballots and taking the additional action on the ballots after election day. The expenditures will vary depending on the municipality.

AGENCIES CONTACTED:

Department of State and New Hampshire Municipal Association

EXHIBIT

D

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State of
New Hampshire

HOUSE RECORD

Second Year of the 167th General Court

Calendar and Journal of the 2022 Session

Web Site Address: www.gencourt.state.nh.us

Vol. 44

Concord, N.H.

Wednesday, May 4, 2022

No. 11

HOUSE JOURNAL NO. 10 (Cont'd)

Thursday, April 21, 2022

Rep. Osborne moved that the House adjourn.
Motion adopted.

HOUSE JOURNAL NO. 11

Wednesday, May 4, 2022

The House assembled at 10:00 a.m., and was called to order by the Speaker.

Prayer was offered by House Chaplain, Reverend Bob Stewart, Pastor of St. Paul's United Methodist Church in Manchester.

Let us be in a Spirit of Prayer. O Spirit of the Living God, fall afresh on us! Guide and direct us this day. May our conversations today be conversations that reflect Your Spirit, O God. A Spirit of respect for each other. A respect that our words spoken reflect who we are as well as who's we are. O Spirit of the Living God, fall afresh on us! May we represent those that elected us to the best of our ability and may we through that representation reflect Your light out into our communities and out in to the world. May others see that harmony and peace can exist even when we don't agree. O Spirit of the Living God, melt us and mold us! Shape us O God to be the people You want us to be and that we are molded and shaped by Your love. You are a God of love and let us reflect that love to everyone we meet. O Spirit of the Living God, fill us and use us! Fill us with Your love and peace so that we lead in the same way. Use us to be Your clear image here in New Hampshire and it is our hope that image will project outside of this chamber and out into the world that You have created and entrusted to our care. O Spirit of the Living God, fall afresh on us! God bless those who lead us today. Keep Your guiding hand on each one, we pray. O Spirit of the Living God, fall afresh on the world! Be with the people of Ukraine and with Russia. Be in other parts of the world where there is turmoil and anguish. We pray Your Shalom and love will be victorious. It is to Your glory O, God, we pray today. Amen.

Representative George Sykes, member from Lebanon, led the Pledge of Allegiance.

The National Anthem was sung by Hannah Gove, a student at Mascoma Valley Regional High School.

LEAVES OF ABSENCE

Reps. Ammon, Berch, Booras, Cleaver, Ellis, Freitas, Gay, Gourgue, Kelsey, Kimball, Laughton, Major, McBride, Piemonte, Varney, Vincent and White, the day, illness.

Reps. Aldrich, Belanger, Bordes, Amanda Bouldin, Conley, Cornell, Cote, Dutzy, Herbert, Langley, Lundgren, McBeath, Murphy, Richards, Suzanne Smith, Timothy Smith, Snow, Thompson and Trottier, the day, important business.

Rep. Denise Smith, the day, illness in the family.

Rep. Bill King, the day, death in the family.

INTRODUCTION OF GUESTS

April Gove, and Linda Landry, mother and grandmother of the singer, guests of Rep. Sykes. Alicia Gregg, guest of Rep. Telerski. Angela and Matthew Brown, guests of Rep. Rung. Loraine Lindenberg, guest of Rep. Prudhomme-O'Brien. Angela Brennan, guest of Rep. Walz.

CONSENT CALENDAR

Rep. Osborne moved that the Consent Calendar with the relevant amendments as printed in the day's House Record be adopted.

Ex D 001

allocate funding from the New Hampshire Volkswagen Mitigation Trust and may apply for, and accept, other federal funding for the purpose of funding and administering this program and shall not exclude a school or district from receiving grants from the public school infrastructure fund, established in RSA 198:15-y.

Rep. Mary Heath

Statement in support of Inexpedient to Legislate: The minority of the committee believes that there is no need for this pilot project, as it seems highly likely that there have been other localities around the country, including in areas with winter climates, which have experimented with electric school buses. We can obtain the information we need from these other localities. The Volkswagen Settlement monies proposed to fund this bill could be put to better use.

Rep. Bob Lynn

MOTION TO LAY ON THE TABLE

Rep. Steven Smith moved that **SB 417-FN**, establishing an electric school bus pilot program, be laid on the table. On a division vote, with 166 members having voted in the affirmative, and 151 in the negative, the motion was adopted.

REGULAR CALENDAR CONT'D

SB 418-FN, relative to verification of voter affidavits. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Gerald Griffin for the Majority of Finance. This bill came to Finance after a vote in the full House of 180-154 in favor of Ought to Pass with Amendment. The bill only applies to those registering for the first time on election day without proof of his/her identity. The intention is to strengthen election integrity and improve the verification of voter identification and residency. The likely number of voters who may receive Affidavit Ballots may be far less than the 733 who voted statewide in the general 2020 election without proof of his/her identity. The majority of the committee believes that spending an estimated \$48,000 in FY 2023, and \$72,000 in FY 2025 is a reasonable amount to verify identity for same day voter registrants. Vote 12-9.

Rep. Mary Beth Walz for the Minority of Finance. The minority believes this is a troubled bill that should be sent to Interim Study. The creation of provisional ballots that cannot be counted until seven days after an election means elections may not be certified until a week after the polls closed. In a primary election the delay would make it impossible to mail ballots 45 days before the general election placing New Hampshire in violation of the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA). By passing this bill, we are making it difficult, if not impossible, for members of our military stationed overseas, government employees stationed overseas, and US citizens residing overseas to return their ballots in time to be counted. It requires the creation of provisional ballots that include a mark identifying the voter. New Hampshire's Constitution guarantees the right to a secret ballot. Marking ballots with a code that identifies the voter is a clear violation of a voter's constitutional right. We should not be abridging this sacred right. Furthermore, this violation will, no doubt, once again be challenged in the courts, costing the state millions of dollars in legal fees. The most recent challenge to SB 3 cost the state \$4.2 million in legal fees and the equivalent of two years of full-time lawyers in our Department of Justice. The minority in the Finance Committee cannot support a bill that violates our state constitution and is most certainly going to be challenged in our courts. By changing the rules for same day voter registration SB 418 endangers the exemption New Hampshire enjoys from the National Voter Registration Act (NVRA). Compliance with NVRA would require a complete, radical, and expensive change to the way we register voters in New Hampshire. SB 418 is a classic example of a bill that has unintended consequences. Given that implementing this bill will abridge the constitutional rights of some of our citizens, will cause the state to violate two federal laws, and that violation of those federal laws could cost us millions of dollars in legal fees, the loss of federal dollars, and the possible high cost of revamping our voter registration system, the minority cannot support SB 418.

Majority Amendment (1870h)

Amend RSA 659:23-a, II(b) as inserted by section 2 of the bill by replacing it with the following:

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

Majority committee amendment was adopted.

The question being adoption of the majority committee report of Ought to Pass with Amendment.

Rep. Walz spoke against.

Rep. Barbara Griffin spoke in favor.

Rep. Hobson requested a roll call; sufficiently seconded.

YEAS 164 - NAYS 155**YEAS - 164
BELKNAP**

Bean, Harry
Howard, Raymond
O'Hara, Travis
Terry, Paul

Comtois, Barbara
Johnson, Dawn
Ploszaj, Tom

Harvey-Bolia, Juliet
Lang, Timothy
Silber, Norman

Hough, Gregg
Littlefield, Richard
Sylvia, Michael

CARROLL

Avellani, Lino
MacDonald, John

Nelson, Bill
Smith, Jonathan

Cordelli, Glenn
McConkey, Mark

Deshaies, Brodie
Umberger, Karen

CHESHIRE

Hunt, John

Qualey, James

Rhodes, Jennifer

Santonastaso, Matthew

COOS

Craig, Kevin

Davis, Arnold

Merner, Troy

GRAFTON

Alliegro, Mark
Sanborn, Gail

Berezhny, Lex
Greeson, Jeffrey

Depalma IV, Joseph
Ladd, Rick

Folsom, Beth
Simon, Matthew

HILLSBOROUGH

Lekas, Alicia
Blasek, Melissa
Kelley, Diane
Griffin, Gerald
Greene, Bob
Kofalt, Jim
Lewicke, John
Mooney, Maureen
Plett, Fred
Rice, Kimberly
Lekas, Tony

Alexander, Joe
Boehm, Ralph
Erf, Keith
Gagne, Larry
Healey, Robert
Sanborn, Laurie
Marston, Dick
Notter, Jeanine
Post, Lisa
Rouillard, Claire
Ulery, Jordan

Griffin, Barbara
Burt, John
Fedolfi, Jim
Gorski, Ted
Homola, Susan
Lanzara, Tom
Mayville, Mary
Nunez, Hershel
Prout, Andrew
Sheehan, Vanessa
Warden, Mark

Berry, Ross
Creighton, Jim
Foster, William
Gould, Linda
Infantine, William
Lascelles, Richard
McLean, Mark
Pauer, Diane
Renzullo, Andrew
Somero, Paul

MERRIMACK

Allard, James
Hill, Gregory
Mason, James
Boyd, Stephen
Wolf, Dan

Andrus, Louise
Kennedy, Margaret
McGuire, Carol
Seaworth, Brian
Yakovovich, Michael

Cambrils, Jose
Klose, John
Moffett, Michael
Testerman, Dave

Cross, Kenna
Leavitt, John
Pearl, Howard
Wells, Natalie

ROCKINGHAM

Abbas, Daryl
Baldasaro, Al
DeSimone, Debra
Edwards, Jess
Hobson, Deborah
Khan, Aboul
Lynn, Bob
Milz, David
Prudhomme-O'Brien, Katherine
Spillane, James
Torosian, Peter
Vose, Michael
Weyler, Kenneth

Abrami, Patrick
Baxter, Tim
Dodge, Dustin
Emerick, Tracy
Nelson, Jodi
Layon, Erica
Pearson, Mark
Osborne, Jason
Roy, Terry
Sweeney, Joe
Tripp, Richard
MacDonald, Wayne
Yokela, Josh

Abramson, Max
Bernardy, JD
Dolan, Tom
Ford, Oliver
Janigian, John
Litchfield, Melissa
McMahon, Charles
Potucek, John
Pearson, Stephen
Sytek, John
True, Chris
Wallace, Scott

Acton, Dennis
Bershtein, Alan
Doucette, Fred
Green, Dennis
Katsakiores, Phyllis
Love, David
Melvin, Charles
Pratt, Kevin
Soti, Julius
Thomas, Douglas
Tudor, Paul
Welch, David

STRAFFORD

Bailey, Glenn
Hayward, Peter
Newton, Clifford

DeLemus, Susan
Horgan, James
Pitre, Joseph

Groen, Fenton
Kaczynski, Thomas
Turcotte, Leonard

Harrington, Michael
Kittredge, Mac
Wuelper, Kurt

SULLIVAN

Aron, Judy
Stapleton, Walter

Callum, John

Rollins, Skip

Spilsbury, Walter

**NAYS - 155
CARROLL**

Buco, Thomas
McAleer, Chris

Burroughs, Anita
Woodcock, Stephen

Knirk, Jerry

Marsh, William

CHESHIRE

Abbott, Michael	Ames, Richard	Bordenet, John	Faulkner, Barry
Fenton, Donovan	Fox, Dru	Gomarlo, Jennie	Harvey, Cathryn
Maneval, Andrew	Mann, John	Parshall, Lucius	Schapiro, Joe
Toll, Amanda Elizabeth	Weber, Lucy	Welkowitz, Lawrence	

COOS

Kelley, Eamon	Hatch, William	Laflamme, Larry	Theberge, Robert
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GRAFTON

Abel, Richard	Adjutant, Joshua	Almy, Susan	Dontonville, Roger
Egan, Timothy	Fellows, Sallie	Gordon, Edward	Hakken-Phillips, Mary
Ham, Bonnie	Massimilla, Linda	Muirhead, Russell	Nordgren, Sharon
Stavis, Laurel	Sykes, George	Weston, Joyce	

HILLSBOROUGH

Bouldin, Andrew	Boyd, Bill	Baroody, Benjamin	Beaulieu, Jane
Bergeron, Paul	Bouchard, Donald	Bradley, Amy	Chretien, Jacqueline
Cohen, Bruce	Connors, Erika	DiSilvestro, Linda	Espitia, Manny
Goley, Jeffrey	Graham, John	Griffith, Willis	Hamer, Heidi
Harriott-Gathright, Linda	Heath, Mary	Jack, Martin	Jeady, Jean
Klee, Patricia	Klein-Knight, Nicole	Labranche, Tony	Leishman, Peter
Long, Patrick	King, Mark	Murray, Megan	Mangipudi, Latha
McGhee, Kat	Mullen, Sue	Nutting-Wong, Allison	O'Brien, Michael
Pedersen, Michael	Perez, Maria	Petrigno, Peter	Piedra, Israel
Query, Joshua	Newman, Ray	Rombeau, Catherine	Rung, Rosemarie
Newman, Sue	Sofikitis, Catherine	Stevens, Deb	Telerski, Laura
Toomey, Dan	Vail, Suzanne	Van Houten, Constance	Vann, Ivy
Veilleux, Daniel	Wilhelm, Matthew		

MERRIMACK

Alicea, Caroletta	Bartlett, Christy	Caplan, Tony	Ebel, Karen
Ellison, Arthur	Gallager, Eric	Hall, Muriel	Lane, Connie
Luneau, David	MacKay, James	McWilliams, Rebecca	Myler, Mel
Pimentel, Roderick	Schamberg, Thomas	Schuett, Dianne	Schultz, Kristina
Shurtleff, Steve	Soucy, Timothy	Wallner, Mary Jane	Walz, Mary Beth
Wazir, Safiya	Woods, Gary		

ROCKINGHAM

Altschiller, Debra	Bunker, Lisa	Cali-Pitts, Jacqueline	Edgar, Michael
Gilman, Julie	Grossman, Gaby	Grote, Jaci	Guthrie, Joseph
Hamblet, Joan	Harb, Robert	Murray, Kate	Loughman, Tom
Maggiore, Jim	Malloy, Dennis	Meuse, David	Paige, Mark
Pantelakos, Laura	Read, Ellen	Simpson, Alexis	Somssich, Peter
Ward, Gerald			

STRAFFORD

Bixby, Peter	Cannon, Gerri	Fontneau, Timothy	Grassie, Chuck
Horrigan, Timothy	Kennedy, Cam	Levesque, Cassandra	Smith, Marjorie
Schmidt, Peter	Rich, Cecilia	Salloway, Jeffrey	Sandler, Catt
Southworth, Thomas	Spang, Judith	Treleaven, Susan	Wall, Janet

SULLIVAN

Cloutier, John	Gottling, Suzanne	Merchant, Gary	Oxenham, Lee
Sullivan, Brian	Tanner, Linda		

and the majority committee report was adopted and the bill was ordered to third reading.

SB 420-FN-A-1, establishing an extraordinary need grant for schools and relative to additional adequate education grant amounts for pupils receiving special education services. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Karen Umberger for the Majority of Finance. This bill provides an extraordinary need grant for schools. It provides additional aid for school systems with equalized evaluation under \$6 million. Each child who receives free and reduced lunch that are in these school systems will receive additional dollars at a cost of \$14.5 million. In order to receive these grants, the schools must provide an accountability plan to the Department of Education (DOE). As the bill came to the Finance Committee it also included additional funds for children receiving special education services, which was anticipated to cost over \$29 million. The Finance Committee did not believe the Education Trust Fund could support both of these programs and, opted to remove the special education portion of the bill which passed the House in April. Vote 14-6.

Rep. Leonard Turcotte for the Minority of Finance. This bill would create a new and additional layer of educational aide above and beyond all educational aide that currently exists. The "extraordinary need grants"

EXHIBIT

E

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SB 418-FN - AS AMENDED BY THE HOUSE

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

03/31/2022 1096s
 21Apr2022... 1487h
 4May2022... 1870h 22-3015
 11/04

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 Findings.

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

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

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

659:23-a Affidavit Ballots.

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

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

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

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

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

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

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

VI. No later than 14 days after the election, any town, city, ward, or district in which any affidavit ballots were cast, and not subsequently verified, shall provide to the secretary of state a summary report, by race or ballot issue, of the total votes

cast by the unqualified voters. The total vote minus the unqualified affidavit ballot vote for each race or issue shall be the final vote to be certified by the appropriate certifying authority.

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

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

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

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

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

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

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

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

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

~~[(2)]~~ ***(4) If the voter executes a challenged voter affidavit and casts an affidavit ballot,*** the moderator or the moderator's designee shall take a photograph of the voter and immediately print and attach the photograph to ~~[- and thus make it a part of, the affidavit form. However, if a photograph was taken under RSA 654:12, then a notation shall be made on the challenged voter affidavit stating that the photograph is attached to the qualified voter affidavit or sworn statement on the general election day registration form]~~ ***the duplicate copy of the affidavit voter verification letter to be delivered to the secretary of state.*** The photograph shall be 2 inches by 2 inches, or larger, and may be in color or in black and white. The moderator or his or her designee who took the photograph and the voter shall then sign the challenged voter affidavit. The moderator or designee shall delete the photograph from the camera in the presence of the voter. If the moderator or his or her designee is unable to take the voter's photograph due to equipment failure or other cause beyond the moderator's or his or her designee's reasonable control, the voter may execute a challenged voter affidavit ***and cast an affidavit ballot*** without a photograph.

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

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

an affidavit ballot.

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

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

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

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

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

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

LBA
22-3015
Revised 4/27/22
Amended 4/25/22

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

EXHIBIT

F

RETRIEVED FROM DEMOCRACYDOCKET.COM

To: New Hampshire Election Officials
From: Secretary of State David M. Scanlan
Re: SB 418 (2022), Affidavit Ballots
Date: February 10, 2023

SB 418, Chapter 239 of the Laws of 2022, requires that in-person voters registering in New Hampshire for the first time who are unable to prove their identity on election day must use a ballot marked as an "Affidavit Ballot." The voter has a duty to submit proof of identity to the Secretary of State within 7 days after the election. If identity is not proven, the affidavit ballot is removed and the votes on that ballot are deducted from the election results. This guidance addresses implementation of this new law.

A. Who is required to use an affidavit ballot?

A voter uses an affidavit ballot only if **all** of the following apply:

1. Election Day Registration;
2. First time registrant in New Hampshire;
 - ❖ When ElectionNet is available at the polling place, check for prior registration;
 - ❖ When ElectionNet is not available, rely on the Voter Registration Form entry for "Place Last Registered to Vote." If applicant enters a New Hampshire town/city ward, treat as previously registered in New Hampshire – affidavit ballot does not apply;
 - ❖ If the applicant left the "Place Last Registered to Vote" blank, ask the applicant to verify that they have never been registered to vote anywhere in New Hampshire in the past.
3. Applicant does not have valid Photo ID to prove identity; and
4. Applicant does not meet the identity requirements of RSA 659:13; RSA 659:13,I(c); RSA 659:23-a.

The greeter or a ballot clerk must direct an unregistered person seeking to register and vote without a valid photo identification to the Supervisors of the Checklist. RSA 659:13, I(c)(2).

B. Verifying Identity

The Supervisors of the Checklist, during processing of the voter's registration, shall review the voter's qualifications and determine if the voter's identity can be verified. RSA 659:13, I(c)(2).

For registered voters who do not have photo ID, a ballot clerk will work with the voters to determine if the Moderator, Clerk, or a Supervisor personally knows the voters well enough to verify each voters identity.

If identity is verified, mark the voter on the checklist as if they showed a New Hampshire driver's license and issue a ballot.

If identity is not verified, send the voter to the "No Photo ID" table where the staff will require the voter to complete a Challenged Voter Affidavit and take the voter's photo. The voter presents the completed Challenged Voter Affidavit with an attached photo to the ballot clerk. The ballot clerk marks the checklist, including a checkmark in the CVA box, and issues the voter a ballot. This new law does not change the established process for a registered voter without photo ID.

For voters registering for the first time in New Hampshire on election day without a photo ID, if the Supervisors of the Checklist cannot verify the identity of an applicant who is registering in New Hampshire for the first time, the applicant must execute a Challenged Voter Affidavit, have their photo taken, and vote using an affidavit ballot. The photo taken shall be attached to the second copy of the Affidavit Verification Letter and delivered to the Secretary of State. If the Moderator, Clerk, or a Supervisor personally knows the applicant well enough they can verify the voter's identity.

For a voter already registered in New Hampshire but who is registering in a new town or ward, the process for proof of identity by an applicant who is registering to vote but was previously registered in New Hampshire, which is known as a registration transfer, is not changed by SB 418. **A Moderator, Clerk, or Supervisor who personally knows the person can verify the applicant's identity.** Otherwise, the transfer registration applicant must complete a Qualified Voter Affidavit and have a photo taken or complete an affidavit of religious objection. The photo is

attached to the Qualified Voter Affidavit and kept with the Supervisors' records.

For all voter registration applicants:

- If the camera fails, the voter may vote without a photograph being taken.
- If the voter objects to being photographed based on religious beliefs, the voter shall complete an affidavit of religious exemption in accordance with RSA 659:13-b.

For an election day applicant who is registering to vote for the first time in New Hampshire without a photo ID, after the registration is approved by the Supervisors, the Moderator oversees the marking and issuing of an affidavit ballot and Affidavit Voter Package to the voter.

The Moderator shall direct a ballot clerk to add the voter to the checklist and ensure that the box for Challenged Voter Affidavit use (CVA) on the checklist is marked to show that the voter used a Challenged Voter Affidavit for proof of identity.

C. Affidavit Voter Package

A voter who uses an affidavit ballot shall be issued an "Affidavit Voter Package." The Secretary of State will issue each town and city ward a quantity of Affidavit Voter Packages prior to the next election and will establish a process for replenishing the supply as needed in advance of future municipal and state elections.

The Affidavit Voter Package must include:

- A prepaid and pre-addressed U.S. Postal Service envelope addressed to the Secretary of State;
- An Affidavit Verification Letter (two copies) with the document "Registering to Vote in New Hampshire," which explains the documents required to qualify to vote in New Hampshire;
 - One marked copy of the Affidavit Verification Letter shall be issued to the voter;
 - One marked copy of the Affidavit Verification Letter shall be retained by the local election official to send to the Secretary of State.

- **At state elections**, include the state copy of the Affidavit Verification Letter(s) with the election night return of votes and the one4all tablet.
- **At special state elections**, mail the state's copy of the Affidavit Verification Letter(s) to the Secretary of State using a pre-paid, pre-addressed, U.S. Postal Service envelope provided by the Secretary of State and ensure it is placed into the U.S. mail within one day of the election (by 5:00 P.M. on the Wednesday immediately following election day).
- **At municipal elections**, the Moderator, with assistance as needed from the Clerk, shall place the copies of the Affidavit Verification Letter(s) in a pre-paid, pre-addressed, U.S. Postal Service envelope provided by the Secretary of State and ensure it is placed into the U.S. mail within one day of the election (by 5:00 P.M. on the Wednesday immediately following election day).
- The New Hampshire Voter ID Law – Explanatory Document, which has been revised to reflect the Affidavit Ballot law.
- A blank voucher for obtaining a free photo identification, for voting purposes only, from the Division of Motor Vehicles. The Moderator should inquire whether the voter has a photo identification that they just did not bring to the polls. If the voter does not have any photo ID, the Moderator should explain the availability of a free photo identification through the Division of Motor Vehicles.

Encourage the voter to obtain the Clerk's signature on the voucher while at the polling place. In a city, Ward Clerks may sign the voucher. The vouchers provided in the Affidavit Voter Package will have a Secretary of State seal on the form and need not have the Clerk's seal on the form, just the Clerk's signature.

 - A Division of Motor Vehicles form explaining the proof of identity that must be presented to obtain a photo identification for voting purposes only should be included.

The voter must deliver the completed Affidavit Verification Letter and a proof of identity document in the pre-paid, pre-addressed, US Postal Service envelope to the Secretary of State within 7 days after the election. Delivery to the Postal Service no later than day 5 following the election is recommended. The voter may also have the completed package

delivered to the Secretary of State's office no later than day 7 following the election.

The Moderator should pre-number sets of Affidavit Verification Letters for each election. Number both the copy going to the voter and the copy going to the Secretary of state with a sequential number in the "Affidavit Ballot #___" space. This will ensure that if a Deputy or Assistant Moderator issues an affidavit ballot when covering for the Moderator, there is one unique number for each affidavit ballot.

The State's copy of the Affidavit Verification letter should be the only record containing the voter's name and the Affidavit Ballot number. Do not keep a copy or a separate list. This helps preserve the voter's right to a secret ballot. Once the State's copy of the Affidavit Verification letter is sent to the Secretary of State, there should be no local record that identifies which voter used an affidavit ballot or the Affidavit Ballot number that was written on a specific voter's ballot.

D. Affidavit Ballot

The "Affidavit Ballot" is an election day ballot on which the Moderator marks "Affidavit Ballot # ___." Enter the number "1" on the affidavit ballot for the first voter using an affidavit ballot, "Affidavit Ballot #2" on the affidavit ballot for the second voter using an affidavit ballot, continuing sequentially for all affidavit ballots used at the election. The "Affidavit Ballot #_" shall be written in red or blue ink in the header area of the ballot.

At town, school, and village district elections, where a voter receives ballots from both town and school elections and/or SB2/Official Ballot Referendum multiple page ballots, the "Affidavit Ballot # ___" must be written on each ballot page using an identical number on each ballot page issued to one voter.

At polling places using a ballot counting device, a single thick black line must be drawn through at least 3 of the timing marks along the top and bottom of the ballot. If an affidavit ballot voter inserts their ballot into the ballot counting device, these markings will cause the device to reject/return the ballot. Affidavit ballots must be placed into the device's side pocket for hand counting with other hand count ballots. The side pocket is designated as the container for affidavit ballots as required by RSA 659:23-a, IV.

At polling places using a ballot box, a voter casting a marked affidavit ballot in a hand count polling place must cast the ballot in person and the

Moderator must place the marked ballot in a container designated "Affidavit Ballots." Each polling place must prepare this "affidavit ballots" box for each election to ensure its availability if needed. A cardboard box with a printed sign attached stating "Affidavit Ballots" satisfies this requirement. RSA 659:23-a, IV.

After the polls close to voting, the Moderator must manage the hand counting of affidavit ballots in a manner that protects those voters' right to a secret ballot. After counting is complete, the affidavit ballots must be kept segregated from all other ballots and sealed into a separate container. At most polling places, the affidavit ballots can be sealed into a large envelope or box if needed. The sealed container with the marked and counted affidavit ballot(s) must be placed in the custody of the Clerk who will securely store the container in the same place and manner as sealed boxes of ballots from the election. The separate, sealed, affidavit ballot container will allow retrieval of specific affidavit ballots without breaking the seal(s) on the other boxes used to store ballots following the election.

For state elections, if the ballots from the polling place are transferred to the custody of the Secretary of State for the purposes of an audit or re-count, the sealed affidavit ballot container shall also be transferred to the custody of the Secretary of State.

Best practice is for the Moderator to hand count all affidavit ballots using a tally sheet that will also be used for hand counting other ballots. When the Moderator completes entering the votes from the hand count of the affidavit ballot(s) on the tally sheet, the same sheet will be used by the team hand counting other ballots that will add marks on the tally sheet for the other ballots the team counts. When counting is complete, the combined marks from the affidavit ballots and other hand count ballots will not allow anyone to determine from the tally sheet how the affidavit voter(s) marked their ballots. **The tally sheet shall not be marked to show how affidavit voter(s) marked their ballot(s) versus how other hand count voters marked their ballots - all ballot totals must include both affidavit ballots and other hand count ballots.**

A tally of the number of affidavit ballots cast is public information and must be announced when the results of the election are announced. RSA 659:23-a, IV. Keep a record of the number of affidavit ballots that are issued to voters. **Do not include the identity of the voters on that list.**

Never disclose the name of any voter and the candidate(s) for whom that voter voted for or how that voter voted on a question. Announce

only the final total results that include all results from a ballot counting device and all results from hand counting of ballots. The ballot counting device results tape is a public document. After complete results are announced, the public gets to know how many votes a candidate received from device counted ballots versus from all hand counted ballots. Do not disclose the breakdown of how many votes a candidate received from affidavit ballots versus other hand counted ballots. This protects the affidavit ballot voter's right to a secret ballot.

E. Deducting Votes

The Secretary of State will notify the Moderator to retrieve an affidavit ballot if a voter does not return an Affidavit Verification Letter as required by law. The Moderator and Clerk shall schedule a public counting session by posting a notice "in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings." RSA 91-A:2, II. It is expected that the public counting session will take place in the Clerk's office or some other suitable room in a town/city building.

For state elections, the deduction count and transmittal of the revised Return of Votes to the Secretary of State shall be completed as soon as possible, but no later than 14 days after the election. RSA 659:23-a, VI. The counting of the votes on an affidavit ballot(s) shall use "the same methods of counting and observation utilized on the day of the election for hand counted ballots." RSA 659:23-a, V. "The counting of votes shall be public and conducted within [a] guardrail and shall not be adjourned nor postponed until it shall have been completed. No ballot shall be placed within 4 feet of the guardrail during the counting of votes." RSA 659:63. Any informal tool, such as a rope, ribbon, or a line of chairs can be used as the rail establishing a 4 foot space between ballot counters and observers. After counting, the affidavit ballot(s) shall be re-sealed in an envelope or appropriate container and returned to the custody of the Clerk to be kept in secure storage with the other ballots from the election, for the period of time required by law.

The Moderator and Clerk shall revise the Return of Votes form previously submitted, noting the number of votes deducted because of unverified affidavit ballots and the resulting revised total votes for each candidate and question. This revised Return of Votes form shall be signed and dated by the Moderator and Clerk. For a state election, the revised Return of Votes must

be submitted to the Secretary of State by fax or scanned and attached to an e-mail sent to: elections@sos.nh.gov.

For state elections, the Secretary of State will aggregate revisions and certify the revised total vote for each office and question. The results posted on the Secretary of State's web site shall be updated to reflect the deducted votes in a manner similar to that used to report recount results.

For municipal elections, the Moderator shall certify the revised Return of Votes. The Clerk shall update any posted results to reflect votes deducted because of unverified affidavit ballots. The Clerk will follow existing law to notify the candidates who are elected to office of their obligation to take the oath of office.

The Secretary of State will refer to the Attorney General's Office the names of all affidavit ballot voters who do not return an Affidavit Verification Letter with the required proof of identity. The New Hampshire Attorney General's Office will investigate to determine whether any election law was violated in accordance with RSA 7:6-c. RSA 659:23-a, VII.

F. Recounts

If the total number of affidavit ballots submitted for any local, district, county, or statewide race or measure would, if counted in favor of either candidate or measure, alter the outcome of the election, the Secretary of State shall extend the deadline for requesting a recount until after the deadline for submitting Affidavit Verification Letters with proof of identity. The Secretary of State shall publish the new deadline(s) for requesting a recount. RSA 660:17-a.

G. Requirements for Photo ID and Identity Verification

This is a review of existing law.

To be valid, photo identification must:

- Show the name of the individual to whom the identification was issued;
 - The name shall substantially conform to the name on the checklist/voter registration application signed by the applicant;
- Show a photograph of the individual to whom the identification was issued; and

- Be current or, if expired, have an expiration date that has not been exceeded by more than 5 years
 - Except, if the voter/applicant is 65 years old or older, there is no limit on use of an expired photo identification;
 - Except that a student ID is valid if it has either an expiration date or an issuance date that has not been exceeded by a period of more than 5 years.
- Be a driver's license issued by any state or the federal government; or
- Be a New Hampshire Voter ID issued by the Department Of Safety; or
- Be a non-driver ID issued by the NH Division of Motor Vehicles or any other state; or
- Be a United States Armed Services identification card; or
- Be a United States passport or passcard; or
- Be a valid student identification card issued by;
 - A college, university, or career school; or
 - A public high school in New Hampshire; or
 - A non-public high school in New Hampshire; or
 - Dartmouth College; or
 - A college or university operated by the University System of New Hampshire or the Community College System of New Hampshire; or

Lists of the educational entities that are recognized as issuing valid student photo identification are posted on the Secretary of State's web site here:

<https://www.sos.nh.gov/elections/elections/election-officials>

- Be a photo identification not authorized by any of the subparagraphs above, but determined to be legitimate by the Supervisors of the Checklist, the Moderator, or the Clerk of a town, ward, or city (RSA 659:13, II (a)(7);
 - A voter using such an ID is subject to challenge;
 - Examples include, but are not limited to: Employer issued ID from an employer who the Supervisors, Moderator, or Clerk know to have appropriate controls;
- Verification of the voter's identity by a Supervisor of the Checklist, Moderator, or the Clerk;
 - **If verification of identity by a Supervisor of the Checklist, Moderator, or Clerk is used for a person registering on election day for the first time in New Hampshire,** the checklist must be marked in the margin by the voter's name with "P" indicating "personal recognizance," "S" if verified by a Supervisor, "M" if verified by the Moderator, or "C" if verified by

the Clerk, followed by the first and last initials of the individual providing the verification of identity. The mark on the checklist shall be made by the Moderator, Clerk, or Supervisor who identified the voter. "By initialing the checklist, the moderator [or] clerk [or supervisor] personally affirms, under penalty of perjury, the identity of the voter they are qualifying to vote." RSA 659:13, II (b). While RSA 659:13 lists the Moderator and Clerk, it relies on existing law that also gives the Supervisors of the Checklist authority to verify identity.

- "An election officer pro tempore as provided for in RSA 658:19 through 658:22 shall have all the powers and duties of the officer he replaces as provided in the election laws and shall take the oath of office in like manner." RSA 658:23. "Each town may have a deputy town clerk who shall be qualified in the same manner as the town clerk and who shall perform all the duties of the town clerk in case of his or her absence by sickness, resignation, or otherwise subject to the provisions of RSA 669:65." RSA 41:18. Therefore, a Deputy/Assistant Moderator, Deputy/Assistant Clerk, or a Supervisor Pro Tem may also verify the identity of an applicant for voter registration who does not have a qualified photo identification with them at the polling place when registering.