

CHAPTER 239  
SB 418-FN - FINAL VERSION

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

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ANALYSIS

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

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Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Two*

AN ACT relative to verification of voter affidavits.

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

1 239:1 Findings.

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

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

19 239:2 New Section; Election Procedure; Affidavit Ballot. Amend RSA 659 by inserting after section  
20 23 the following new section:

21 659:23-a Affidavit Ballots.

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

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

29 (a) A prepaid U.S. Postal Service Priority Mail Express (overnight delivery) envelope  
30 addressed to the secretary of state for the affidavit voter to return the affidavit verification letter described

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1 in subparagraph (b) and any required missing documentation that necessitated voting by affidavit ballot.  
2 The return address on this envelope shall be for the office of the secretary of state.

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

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

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

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

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

34 VII. The names of affidavit voters whose verification letters are either not returned to the  
35 secretary of state or which do not provide the required voter qualifying information shall be referred by the  
36 secretary of state to the New Hampshire attorney general's office for investigation in accordance with RSA  
37 7:6-c.

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

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

7 239:3 New Section; General Provisions for Recounts; Affidavit Ballots. Amend RSA 660 by inserting  
8 after section 17 the following new section:

9 660:17-a Affidavit Ballots; Recounts. In any election or referendum, if the total number of affidavit  
10 ballots submitted for any local, district, county, or statewide race or issue would, if counted in favor of  
11 either candidate or position, alter the outcome of the election, the deadlines for filing recount requests  
12 imposed by RSA 660:1, 660:7, 660:10, 660:12, and 660:13 shall be extended until after the deadline for  
13 submitting affidavit verification materials in RSA 659:23-a. In such instance, the secretary of state shall  
14 publish new deadlines for filing recounts.

15 239:4 Election Procedure; Obtaining a Ballot. Amend RSA 659:13, I(c) to read as follows:

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

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

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

26 ~~[(2)]~~ (4) If the voter executes a challenged voter affidavit *and casts an affidavit ballot*, the  
27 moderator or the moderator's designee shall take a photograph of the voter and immediately print and  
28 attach the photograph to~~], and thus make it a part of, the affidavit form. However, if a photograph was~~  
29 ~~taken under RSA 654:12, then a notation shall be made on the challenged voter affidavit stating that the~~  
30 ~~photograph is attached to the qualified voter affidavit or sworn statement on the general election day~~  
31 ~~registration form]~~ *the duplicate copy of the affidavit voter verification letter to be delivered to the secretary*  
32 *of state.* The photograph shall be 2 inches by 2 inches, or larger, and may be in color or in black and  
33 white. The moderator or his or her designee who took the photograph and the voter shall then sign the  
34 challenged voter affidavit. The moderator or designee shall delete the photograph from the camera in the  
35 presence of the voter. If the moderator or his or her designee is unable to take the voter's photograph due  
36 to equipment failure or other cause beyond the moderator's or his or her designee's reasonable control,  
37 the voter may execute a challenged voter affidavit *and cast an affidavit ballot* without a photograph.

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1           ~~[(3)]~~ (5) If the voter objects to the photograph requirement because of religious beliefs,  
2 he or she may execute an affidavit of religious exemption in accordance with RSA 659:13-b, which shall  
3 be attested to by an election officer and attached to the challenged voter affidavit.

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

7           239:5 Voting Procedure; Obtaining a Ballot. Amend RSA 659:13, II(b) to read as follows:

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

21           239:6 New Subparagraphs; Voting Procedure; Obtaining a Ballot. Amend RSA 659:13, II by inserting  
22 after subparagraph (c) the following new subparagraphs:

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

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

29           239:7 Effective Date. This act shall take effect January 1, 2023.

Approved: June 17, 2022  
Effective Date: January 01, 2023

