

HB 495 - AS INTRODUCED

2023 SESSION

23-0381

06/08

HOUSE BILL **495**

AN ACT relative to counting votes.

SPONSORS: Rep. D. McGuire, Merr. 14

COMMITTEE: Election Law

ANALYSIS

This bill establishes guidelines for determining which marks on a ballot constitute a vote. This bill also requires an instruction on ballots regarding requesting a new ballot.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to counting votes.

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

1 1 Instructions to Voters. Amend RSA 659:17 to read as follows:

2 659:17 Marking the Ballot; Instructions to Voters. The secretary of state shall provide on the
3 top of the general election ballot the following voting instructions. The secretary of state is
4 authorized to replace the phrase "Make the appropriate mark" with an appropriate description and
5 example of the mark to be made for the type of ballot in use, such as "Make a cross (X) in the box,"
6 "Completely fill in the oval," or "Complete the arrow":

7 1) To Vote

8 Make the appropriate mark to the right of your choice. For each office vote for not more than the
9 number of candidates stated in the sentence: "Vote for not more than ____." If you vote for more than
10 the stated number of candidates, your vote for that office will not be counted.

11 2) To Vote by Write-In

12 To vote for a person whose name is not printed on the ballot, write in the name of the person in
13 the "write-in" space. Make the appropriate mark to the right of your choice.

14 **3) *If you incorrectly mark your ballot, you may request a new ballot from the***
15 ***moderator.***

16 2 Determining Intention of Voter. Amend RSA 659:64 to read as follows:

17 659:64 Determining Intention of Voter.

18 ***I.*** If a ballot is marked for any office in a way which does not readily admit of counting or if a
19 disagreement over how to count the ballot for any office occurs among the election officers present
20 and counting votes, then the ballot shall be counted for that office in accordance with the majority
21 vote of the election officials present and counting votes; provided that, if no alternative count
22 receives a majority vote, the ballot shall be regarded as defective for that office as provided in RSA
23 659:65. ***Election officers shall use the guidelines in paragraph II when determining how to***
24 ***count the ballot.***

25 ***II. Election officers counting votes shall determine whether a mark within a box,***
26 ***oval, or arrow, herein called a "spot," is a vote as follows:***

27 (a) ***A correctly filled-in spot is a vote.***

28 (b) ***Where all spots marked on the ballot are similarly marked, they are all***
29 ***votes, except in cases where the voter votes for more than the number of candidates***
30 ***permitted.***

(c) *Where one or 2 spots are marked differently from the rest of the marks on the ballot:*

(1) *If the candidate's name is crossed or scratched out, it is not a vote.*

(2) *If counting that spot would result in more votes for the office than permitted, it is not a vote.*

(3) *A small dot inside the spot is not a vote.*

(4) *An "X" superimposed over a correctly filled-in spot is not a vote.*

(5) *Tracing the edge of a spot is not a vote.*

(6) *A correctly filled-in spot with extra lines protruding from the spot is a vote, except as provided in subparagraph (4).*

(d) *If the spot for the write-in is not filled in, but the name of a person in the "write-in" space has been written in, then the write-in vote is valid.*

3 General Election Recounts. Amend RSA 660:5 to read as follows:

660:5 Conduct of Recount. If directed by the secretary of state, the state police shall collect all ballots requested from the town or city clerks having custody of them and shall deliver them to the public facility designated by the secretary of state. At the time and place so appointed, the ballots cast for such office shall be counted by the secretary of state and such assistants as the secretary of state may require. When counting the ballots, the secretary of state or his or her assistants shall visually inspect each ballot *in accordance with the guidelines in RSA 659:64, II*. No mechanical, optical, or electronic device shall be used for the counting of ballots. The candidates, their counsel, and assistants shall have the right to inspect the ballots and participate in the recount under such suitable rules as the secretary of state may adopt. If the candidate requesting the recount cannot attend the recount, the candidate shall designate, in writing, to the secretary of state the name of an individual who will attend the recount and who will be authorized to make decisions on the candidate's behalf. Each candidate or his or her counsel or designee shall have the right to protest the counting of or failure to count any ballot. The secretary of state shall thereupon rule on said ballot and shall attach thereto a memorandum stating such ruling and the name of the candidate making the protest. If, at any time during the counting of the ballots, a discrepancy appears in any ballot for any reason, the secretary of state shall suspend the recount until the discrepancy is resolved, at which time the secretary of state shall continue the recount. In no event shall a discrepancy result in a second recount for the same candidate, as provided in RSA 660:3.

4 Constitutional Amendments Recount. Amend RSA 660:11 to read as follows:

660:11 Conduct. The secretary of state shall request that all town and city clerks forward ballots containing such proposed amendment to the secretary of state forthwith, and the clerks shall immediately forward them. At the time and place so appointed, the ballots shall be counted by the secretary of state and such assistants as the secretary of state may require. When counting the ballots, the secretary of state or his or her assistants shall visually inspect each ballot *in*

1 ***accordance with the guidelines in RSA 659:64, II.*** No mechanical, optical, or electronic device
2 shall be used for the counting of ballots. The ballots shall be open to the inspection of the petitioners
3 and other interested persons under such suitable rules as the secretary of state may prescribe. If,
4 after the recount, it shall appear that the result of the voting on said question is other than that
5 declared upon the original canvass of votes, the secretary of state shall declare the result found upon
6 recount which shall be final unless the result is changed as a result of an appeal taken to the
7 superior court.

8 5 County Referendum Recounts. Amend RSA 660:12 to read as follows:

9 660:12 County Referendum. The secretary of state shall recount the ballots cast on any
10 question which may be submitted to the voters of a county at a state general election under the
11 provisions hereinafter set forth. Application for such recount shall be by written petition signed by
12 at least 50 legal voters of said county presented to the secretary of state no later than the second
13 Friday following the state general election. The recount shall take place at any suitable state facility
14 in the city of Concord as may be designated by the secretary of state at such time as the secretary of
15 state may appoint and under such rules of procedure as he or she shall determine. When counting
16 the ballots, the secretary of state or his or her assistants shall visually inspect each ballot ***in***
17 ***accordance with the guidelines in RSA 659:64, II.*** No mechanical, optical, or electronic device
18 shall be used for the counting of ballots. The secretary of state shall publish notice of the time and
19 place of the recount once in a paper of general circulation throughout the county. The fee for such a
20 recount on a question voted on throughout a county shall be \$25 which shall be paid to the secretary
21 of state by the person submitting the application. If, after the recount, it shall appear that the result
22 of the voting on said question is other than that declared upon the original canvass of votes, the
23 secretary of state shall declare the result found upon recount which shall be final unless the result is
24 changed as a result of an appeal taken to the superior court.

25 6 Local Question Recounts. Amend RSA 660:14 to read as follows:

26 660:14 Conduct. At the time and place so appointed, the ballots shall be counted by the
27 secretary of state and such assistants as the secretary of state may require. The ballots shall be
28 open to the inspection of the petitioners, the officials of the city or town, counsel, if any, of the same,
29 and other interested persons under such suitable rules as the secretary of state shall prescribe.
30 When counting the ballots, the secretary of state or his or her assistants shall visually inspect each
31 ballot ***in accordance with the guidelines in RSA 659:64, II.*** No mechanical, optical, or electronic
32 device shall be used for the counting of ballots.

33 7 Town Election Recounts. Amend RSA 669:32 to read as follows:

34 669:32 Board of Recount. At the time and place so appointed and notified, the clerk shall
35 publicly break the seal of and open the package in which the ballots of said election are kept; and,
36 thereupon, said ballots shall be recounted by the clerk, the moderator, and the selectmen of said
37 town who shall constitute the board of recount. When counting the ballots, the board of recount or

1 their assistants shall visually inspect each ballot *in accordance with the guidelines in RSA*
2 **659:64, II.** No mechanical, optical, or electronic device shall be used for the counting of ballots. Any
3 member of the board of recount who is one of the candidates for the office being recounted shall
4 disqualify himself or herself from the board of recount for all official duties of said board. The
5 moderator shall appoint an assistant who shall take the same oath as, serve in the same capacity as
6 and have all the powers of the recount official whom he or she has replaced.
7 8 Effective Date. This act shall take effect 60 days after its passage.