

SB 489-FN - AS AMENDED BY THE SENATE

02/21/2024 0802s

2024 SESSION

24-2882

08/10

SENATE BILL **489-FN**

AN ACT relative to election audits.

SPONSORS: Sen. Gray, Dist 6

COMMITTEE: Election Law and Municipal Affairs

---

ANALYSIS

This bill requires the secretary of state to conduct audits of a certain percentage of ballot counting devices to be used at state primary and general elections.

-----

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to election audits.

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

1       1 New Subdivision; Election Audits. Amend RSA 660 by inserting after section 31 the following  
2 new subdivision:

## Election Audits

4       660:32 Audit Authorized. The secretary of state shall conduct an audit of the devices used to  
5 tabulate ballots after each state primary, general elections, and after the presidential primary.

6       660:33 Equipment and Technical Assistance. The secretary of state shall develop policies,  
7 procure the equipment, and arrange for any required technical assistance to support the audit  
8 process of ballot counting devices used in state elections in accordance with RSA 660:34.

9       660:34 State Election Audit.

10       I. The secretary of state shall randomly select not less than 8 ballot counting devices used by  
11 towns or city wards to be audited. The secretary of state may divide towns or city wards into groups  
12 for the selection based on criteria such as the device vendor or estimated number of election day  
13 ballots to be processed. The selection of the devices to be audited shall be made after the ballot  
14 counting device memory cards have been programed. The devices and the towns or city wards where  
15 devices to be audited are located shall be non-public.

16       II. The secretary of state shall not announce which devices have been selected to be audited  
17 and the towns or city wards where they are located until after the polls are open on election day.

18       III. Each audit team shall consist of at least 2 individuals appointed by the secretary of  
19 state. One such individual shall have been trained by the secretary of state in the audit process and  
20 the use of audit equipment. The other individual, if not trained by the secretary of state in the audit  
21 process and the use of audit equipment, shall be an elected election official. The secretary of state  
22 may enlist the support of technical experts as an audit team member to assist with the technology  
23 being used.

24       IV. The audit shall be open to the public, but no one except audit team members shall be  
25 allowed to touch any ballot or any of the audit equipment.

26       V. The paper ballots for each device audited shall be processed by the audit equipment, and  
27 the results shall be compared with the results from the specific device being audited. The audit  
28 team shall announce the results of each comparison as it is completed. The secretary of state shall  
29 report final results pursuant to paragraph VII.

1 VI.(a) A random sample of the paper ballots processed by each device being audited shall be  
2 selected, and each selected paper ballot shall be physically examined and compared with the voters  
3 choices recorded by the audit equipment for that ballot. The sample size shall be as follows:

4 (1) If 2 percent of the ballots processed by the device is greater than 50, then 2  
5 percent of the ballots counted and/or scanned shall be the sample size.

6 (2) If 2 percent is equal to or less than 50 ballots, then 50 ballots or the total number  
7 of ballots processed, whichever is smaller, shall be the sample size.

8 (b) Any differences identified during the comparison shall be documented. In the event  
9 of significant differences, the secretary of state may expand the number of ballots sampled and  
10 compared with the voters' choices recorded for each ballot and may order a full hand recount.

11 (c) To facilitate the review of the randomly selected ballots in subparagraph (a) the audit  
12 team may add marks to the ballots selected to allow the audit equipment or auditors to identify  
13 them for the review. The location of the added marks shall be prescribed by the secretary of state.

14 VII. The secretary of state shall make the results of the audits available prior to 12:00 p.m.  
15 on the Friday after the election, except that any full hand recount conducted under paragraph VI  
16 shall be performed under the provisions of RSA 660:4 through RSA 660:6 and no costs for such  
17 recount shall be assessed against any candidate. The secretary shall also report the results of all  
18 audits to the ballot law commission, and the chairpersons of the house of representatives and senate  
19 standing committees with jurisdiction over election law.

20 2 Marking Ballot by Election Officers and Auditors. Amend RSA 659:36 to read as follows:

21 659:36 Marking Ballot by Election Officers ***and Auditors.***

22 ***I.*** No mark of any nature shall be placed on any ballot by:

23 (a) An election officer except as provided in RSA 659:20, 659:22, 659:26-a, and 659:51.

24 (b) ***An auditor except as provided in RSA 660:33.***

25 ***II.*** Whoever knowingly violates this section shall be guilty of a misdemeanor.

26 3 New Section; Recount and Audit Procedures; Publication. Amend RSA 660 by inserting after  
27 section 17-b the following new section:

28 660:17-c Recount and Audit Procedures; Publication.

29 The secretary of state shall publish all recount and audit procedures, as well as the times to hold  
30 any recounts and audits that may take place. The secretary of state shall complete any audit  
31 conducted under this chapter prior to the commencement of a recount for any recount requested.

32 4 Effective Date. This act shall take effect upon its passage.

**SB 489-FN- FISCAL NOTE**  
AS AMENDED BY THE SENATE (AMENDMENT #2024-0802s)

AN ACT                    relative to election audits.

**FISCAL IMPACT:**    ☒ State                    ☐ County                    ☐ Local                    ☐ None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	\$0
Revenue Fund(s)	None			
Expenditures	\$0	\$0	\$75,000 (to be included in Budget Request)	\$90,000 (to be included in Budget Request)
Funding Source(s)	General Fund			
Appropriations	\$0	\$0	\$0	\$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ N/A
- Does this bill authorize new positions to implement this bill? ☒ N/A

**METHODOLOGY:**

This bill mandates audits of ballot counting devices after state primaries, general elections, and presidential primaries, with the Secretary of State responsible for equipment procurement and technical support.

The Department of State indicates the costs related to the requirement of post-election audit of ballots counted by electronic ballot counting devices is included in their FY 2025 budget as Chapter 79:457, Laws of 2023 (HB 2) appropriated \$90,000 for the purpose of updating annual software and subscriptions as well as any additional programing. Additionally, the Department states the on going cost of \$75,000 in FY 2026 and \$90,000 in FY 2027 will be included in the Department's budget request and no appropriation is needed.

**AGENCIES CONTACTED:**

Department of State