

HB 1577-FN - AS AMENDED BY THE HOUSE

22Feb2024... 0598h

2024 SESSION

24-2163
08/05

HOUSE BILL

1577-FN

AN ACT relative to digital images of ballots.

SPONSORS: Rep. See, Merr. 26; Rep. Wood, Merr. 13; Rep. Aures, Merr. 13; Rep. Moffett,
Merr. 4; Rep. Cambrils, Merr. 4; Rep. Hoell, Merr. 27; Rep. Wherry, Hills. 13; Sen.
Pearl, Dist 17

COMMITTEE: [committee]

ANALYSIS

This bill enables the viewing of digital images of ballots under certain circumstances.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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

1 1 Electronic Digital Images of Ballots. RSA 656:42, IX is repealed and reenacted to read as
2 follows:

3 IX. Any electronic digital image of a marked ballot made by a ballot counting device stored
4 on a removable memory device shall be available for public inspection as provided in this section.
5 This shall include the record of how the ballot counting device recorded the votes on each ballot.

6 (a) One or more voters, registered in New Hampshire, shall be permitted to examine the
7 digital images of ballots created on an electronic ballot counting device that uses digital image
8 technology. In this paragraph, the voter or group of voters are referred to as "observers".

9 (b) Notwithstanding any exemptions to RSA 91-A limiting access to ballot images, such
10 images shall be available to observers as provided in this paragraph.

11 (c) The purpose of examining such digital images is to allow for verifying the accuracy of
12 the device and to check for evidence that the device may have programming errors, tampering or
13 malicious programming installed and thus providing reassurance to all the voters of the integrity of
14 the devices used to tabulate election votes.

15 (d) The examination of ballot images shall be under the supervision of the secretary of
16 state and may use state provided computers and displays to provide access to the removable memory
17 devices that contain the digital images.

18 (e) The secretary of state shall:

19 (1) Schedule access for the observers and for arranging for the removable memory
20 devices to be acquired from a municipality.

21 (2) As needed, provide the location of equipment and viewing area and limitations to
22 the number of observers in the viewing area.

23 (3) Verify eligibility.

24 (4) Prevent any observers from making any connection to the computer.

25 (5) Be the only person to handle the original removable memory devices and or make
26 copies thereof.

27 (f) The secretary of state may:

28 (1) Declare any observers who fail to comply with the provisions in this section to be
29 ineligible to further participate in this process.

30 (2) Require non-disclosure agreements regarding personally identifying marks that
31 may occur on a ballot image.

1 (3) Take any other measures to protect the integrity of the election data and the
2 privacy of the voters.

3 (g) Access to ballot images shall not be available to observers until after all recounts and
4 any subsequent appeals are completed. The secretary of state may establish a reasonable time
5 frame for requests to be made, with the time frame not to exceed a period of 4 months from the end
6 of the permitted applicable recounts period. However, access to ballot images shall be available to
7 those persons involved in appeals of election recounts or audits.

8 (h) Any observers that examine ballot images shall have standing to provide a report to
9 the ballot law commission and request an investigation by the attorney general of discrepancies they
10 find. Any request for an investigation and the results of any such investigation shall be made public.

11 (1) Such investigations shall not result in the overturning of an election unless
12 directed by a court of competent jurisdiction.

13 (2) As a result of an investigation of the attorney general, the ballot law commission
14 may disqualify that electronic ballot counting device for use in New Hampshire or may disqualify the
15 entity that programmed the device as a vendor.

16 (i) The secretary of state may determine if copies of the removable memory devices or
17 the digital data on the memory device may be provided to the observers that are examining the
18 digital images. This includes electronic data as well as hard-copy printouts. Alternatively, the
19 secretary of state may allow visual viewing access only on a state owned computer. Any information
20 gathered from the visual examination of such ballot images shall be kept on the observer's own
21 paper, computer, etc. and not downloaded or electronically copied from the source computer.

22 2 Effective Date. This act shall take effect 60 days after its passage.

HB 1577-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDEMENT #2024-0380h)

AN ACT relative to digital images of ballots.

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	Indeterminable Increase \$100,000+	Indeterminable Increase \$100,000+	Indeterminable Increase \$100,000+
Funding Source(s)	General Fund			
Appropriations	\$0	\$0	\$0	\$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ N/A

Estimated Political Subdivision Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	\$0	\$0	\$0	\$0
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill enables registered voters to view electronic images of cast ballots and vote records. It applies solely to data from scanning ballot devices that store this information. The legislation allows public inspection of marked ballot images stored on removable memory devices, following specific conditions.

The Department of State indicates this bill allows registered voters to access electronic images of cast ballots and voting records from specific ballot counting devices. Although two devices meeting these criteria have conditional approval from the Ballot Law Commission, none have received final clearance yet.

The implementation of this bill will result in increased expenses:

- **Memory Cards:** The Secretary of State must acquire removable memory cards from each device used in local or state elections across towns and cities. Costs per card range from \$10 to \$50, excluding delivery expenses. The timing and vendor selection for device use remain uncertain. These cards will need replacement for presidential primaries, state primaries, state generals, special, and local elections equating to \$40 to \$200 per year per device. The Department is unable to determine how many municipalities would need memory cards to know the number of memory cards needed.
- **Software:** The State has the option to purchase memory card reading software from both vendors. One vendor sells it for an annual fee of \$500, while the other estimates an initial cost of \$20,000, plus an annual \$5,000.
- **Equipment and Staffing:** To facilitate the viewing of digital images, the Secretary of State's office will require additional equipment valued at \$2,500. Additionally, hiring an IT Support Position at \$82,000 for FY 2025, \$84,000 for FY 2026 and \$87,000 for FY 2027 will be necessary to coordinate and manage the image viewing process.

Overall, this legislation will incur substantial costs related to procuring memory cards, acquiring software, purchasing equipment, and employing staff to facilitate digital image viewing with an indeterminable increase of \$100,000+ starting in FY 2025.

This bill does not provide an appropriation for the expenditures required to implement this bill nor does it authorized new positions as requested by the department.

The New Hampshire Municipal Association (NHMA) states this bill mandates municipalities to collaborate with the Secretary of State's office, arranging access for observers and acquiring removable memory devices. It also requires altering reports based on inputs from ballot counting devices. Training election officials on new worksheets may incur added expenses like mileage, salaries, reimbursements, and other related costs. Requests to review digital records could lead to increased staff expenses, including overtime, as officials coordinate with the Secretary of State. The NHMA states they are unable to estimate the fiscal impact to expenditures.

AGENCIES CONTACTED:

Department of State and New Hampshire Municipal Association