



TOWN OF DURHAM
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PUBLIC NOTICE

The Town of Durham will conduct a test of the AccuVote ballot counting device per NH-RSA 656:42 on Wednesday, October 23, 2024, starting at 10:00am. The testing will take place at the Durham Town Hall, Council Chambers, at 8 Newmarket Road in Durham, NH 03824. Please contact the Durham Town Clerk's Office if you have any questions about ballot testing.

DATE: Wednesday, October 23, 2024

TIME: 10:00 AM

LOCATION: Durham Town Hall, Council Chambers,
8 Newmarket Road, Durham, NH 03824

CONTACT: Rachel Deane, Durham Town Clerk

NH-RSA 656:42

- I. The ballot law commission shall make such rules as may be necessary to ensure the accuracy of electronic ballot counting devices, including rules for the testing of electronic ballot counting devices prior to each election and the submission of testing records to the secretary of state. The ballot law commission shall make such rules as may be necessary in order that electronic ballot counting devices may be used in this state in such a manner that the election laws may be complied with as far as possible. Said commission shall have the power and authority in making rules to declare certain laws relative to distribution and marking of ballots and other requirements inconsistent with the use of electronic ballot counting devices ineffective in towns and cities adopting such a method of voting. The presiding officer at each polling place shall enforce the rules of the ballot law commission made under the authority of this section.
- II. Consistent with the rules of the ballot law commission the secretary of state shall include protocols for the testing of electronic ballot counting devices in the election manual authorized by RSA 652:22. Each device shall be tested after installation and prior to each election.
- III. Any company, partnership, proprietorship, or other person, wherever located, which supplies, maintains, or programs electronic ballot counting devices which are used in elections in New Hampshire is subject to regulation by this state.
- IV. Each person described in paragraph III shall designate, in writing, an agent for service of all process, including, but not limited to summonses, writs, orders, petitions, and subpoenas, and shall agree in writing that the attorney general, in conjunction with any election investigation, may inspect its records, machines or other devices, and premises.
- V. Any such person described in paragraph III who fails to properly program and test electronic ballot counting devices shall be liable to reimburse the state for the cost of any recount which is necessitated by such failure.
- VI. Any person who knowingly violates the testing procedures established under this section or the rules of the ballot law commission shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.
- VII. Each electronic ballot counting device shall have a removable memory device which can be secured in the device with a tamper evident seal that will disclose unauthorized access to the hardware and software inside the device. Electronic ballot counting devices that are stored in a canvas bag or storage case when not in use shall have a bag or case that is capable of being secured with a tamper evident

seal.

VIII. (a) Before each election, the vendor for any electronic ballot counting device shall provide the secretary of state with an exact electronic record of the data written to each memory card to be used in the election.

(b) The town or city clerk shall preserve each memory device used at each election until after the recounts for such election are complete and any and all legal challenges to the outcome of that election are adjudicated.

(c) The town or city clerk shall securely preserve each memory device used in any election as directed by the secretary of state.

(d)(1) To help ensure that the counting device cannot be tampered with or improperly accessed, the town or city clerk shall employ electronic ballot counting device seals specified by the secretary of state and seal the electronic ballot counting device in the following areas:

(A) The connection of the zippers on the closed canvas cover of the counting device carrying bag, case, or the device base for devices stored in their bases.

(B) The memory device.

(C) Electronic ballot counting device housing and all ports or access points to the device hardware or software, such that the seal(s) would be broken if the device is accessed.

(2) The town or city clerk shall update an activity log supplied by the secretary of state to keep a record each time a counting device seal is broken and a new one installed, and the reason for which the seal was broken.

(3) No person shall break a counting device seal without the presence of 2 witnesses. Upon breaking such seal, the person responsible shall update the activity log, obtain the signatures of each witness, record the reason for breaking such seal, ensure that it is resealed with a new seal immediately, and properly record the new seal number in the activity log.

(4) Before the moderator places into service a counting device on election day, the moderator shall verify all counting device seals have been maintained intact, and any seals which have been broken have been promptly resealed and the activity log properly recorded and signed.

(5) If, on election day, the moderator notices that any seal on the counting device appears tampered with or broken without an adequate record in the activity log, the moderator shall refrain from using the counting device in that election, and shall report the apparent tampering to the attorney general, the secretary of state, the town or city clerk, and the selectmen.

(6) The counting device and the activity log shall be subject to review by the attorney general or secretary of state at any time.

(7) Whenever the town or city clerk receives a memory device from the vendor, the clerk shall break the memory device seal, insert the memory device in the electronic ballot counting device, and apply a new seal. The clerk shall lock any programmed memory device not inserted into an electronic ballot counting device in a safe and record the names of individuals that have access to such safe on the activity log.

(8) Whenever the town or city clerk removes the memory device from the electronic ballot counting device, the clerk shall immediately return it to the memory card programmer or, if programmed locally, secure the device in a safe and reseal the empty memory device slot or port.

(e)(1) The town or city clerk shall give public notice of the date and time of a pre-election test of the electronic ballot counting device and ballots.

(2) Upon receipt of the official ballots from the secretary of state, the town or city clerk shall remove the number of ballots needed to test the electronic ballot counting device from among the official ballots and keep them separate and secure from the remaining official ballots thereafter.

(3) The town or city clerk shall mark any ballots used for testing with the words "TEST."

(4) The town or city clerk shall mark the test ballots in such a way as to demonstrate a vote for each candidate on at least one test ballot, as well as votes for less than and more than the number of candidates that may be voted for an office, write-ins, multiple votes for a candidate who appears in more than one party column for the same office on a general election ballot, and ballots on which there are no votes. The clerk shall mark as many as possible of the combinations of choices that a voter may indicate on the ballot.

(5) The town or city clerk shall run each of the test ballots through the counting device in the following orientations: Top first with side one face up, bottom first with side one face up, top first with side one face down, and bottom first with side one face down.

(6) The town or city clerk shall count the votes marked on the test ballots run through the electronic ballot counting device and multiply the results by 4 to account for the 4 different orientations, and check these results against the tally from the electronic ballot counting device.

(7) If the electronic ballot counting device's tally does not match the count of the town or city clerk, the clerk shall notify the moderator, who shall order that the electronic ballot counting device not be used at the election.

(8) The pre-election test shall be completed no later than the Wednesday immediately prior to the election.

(9) The town or city clerk shall document the pre-election test by preserving:

(A) The test ballots.

(B) The count of votes on the test ballots made by the town or city clerk.

(C) The results from the electronic ballot counting device that was tested.

(10) The clerk shall test all electronic ballot counting devices and memory devices in the possession of the town or city.

(11) Prior to placing the electronic ballot counting device or any memory device into service in an election, the moderator shall certify that there is evidence that pre-election testing was conducted on each electronic ballot counting device and each memory device in the town or city clerk's possession, and that these ballot counting devices and memory devices have passed the test.

IX. Any electronic digital image of a marked ballot made by a ballot counting device, whether stored on the device, on a removable memory device, or on a government computer, shall be non-public and exempt from RSA 91-A.

X. No electronic ballot counting device shall have access to or be connected to the Internet.

XI. The electronic ballot counting device shall be programmed to require that a ballot which contains more than the allowable number of

votes for an office or ballot question on the ballot, known as an "over voted ballot", be returned to the election day voter by the device. The voter shall be instructed to place the ballot in an auxiliary compartment to be hand counted by election officials after the polls close. Over voted ballots of absentee voters shall be placed in the auxiliary compartment by the moderator or his or her appointee to be counted after the polls close.

Source. 1979, 436:1. 1998, 311:3. 2009, 70:3. 2010, 317:70, eff. July 18, 2010. 2020, 23:2-7, eff. July 17, 2020. 2022, 62:1, eff. July 19, 2022; 134:3, eff. June 19, 2022.