

HB 276-FN – VERSION ADOPTED BY BOTH BODIES

18Feb2009... 0132h

08Apr2009... 1193h

2009 SESSION

09-0136

03/10

HOUSE BILL **276-FN**

AN ACT relative to challenges of voters.

SPONSORS: Rep. Pierce, Graf 9; Rep. Weed, Ches 3; Rep. Pastor, Graf 9; Rep. M. Smith, Straf 7; Sen. Houde, Dist 5; Sen. Merrill, Dist 21

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill establishes additional requirements for challenging voters, including a challenge affidavit.

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

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

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to challenges of voters.

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

1 Challenge of Voter; Affidavit. RSA 659:27 is repealed and reenacted to read as follows:

659:27 Challenge of Voter; Affidavit.

I. A voter offering to vote at any state election may be challenged by any other voter registered in the town or ward in which the election is held, an election official, a challenger appointed by a political committee pursuant to RSA 666:4, or a challenger appointed by the attorney general pursuant to RSA 666:5.

II. Upon receipt of a written challenge, the moderator shall determine if the challenge to the ballot is well grounded. If the moderator determines that the

challenge is well grounded, the moderator shall not receive the vote of the person so challenged until the person signs and gives to the moderator an affidavit in the following form: I, _____, do solemnly swear (or affirm) that I am the identical person whom I represent myself to be, that I am a duly qualified voter of this town (or ward), and have a legal domicile therein. If the moderator determines that the challenge is not well grounded, the moderator shall permit the voter to proceed to vote.

III. No voter or appointed challenger shall challenge a person's qualifications to be a voter at the election day voter registration table.

2 New Section; Asserting a Challenge. Amend RSA 659 by inserting after section 27 the following new section:

659:27-a Asserting a Challenge.

I. No challenge may be asserted except in the form of a signed affidavit, under oath administered by an election official, in the following form:

INFORMATION ON THE PERSON MAKING THE CHALLENGE

Name of Person Making the Challenge:

Last Name First Name Middle Name/initial

Party affiliation

If person making a challenge is a voter: Physical Address – Street Name & Number

If person is a political party or attorney general appointee: mailing address & phone number

The challenger's qualifications to assert the challenge

INFORMATION ON THE VOTER BEING CHALLENGED: The person making the challenge shall complete the following:

Name being used by the voter who you wish to challenge:

Last Name First Name Middle Name

GROUND FOR THE CHALLENGE: The person making the challenge shall indicate the ground on which the challenge is made (check all grounds that apply).

☐ The person seeking to vote is not the individual whose name he or she has given

☐ The person seeking to vote has already voted in the election at (name polling place) _____ at approximately (state time if known) _____

____ The person seeking to vote is disqualified as a voter by conviction of a willful violation of the elections laws (state offense, court, and date of conviction)

____ The person seeking to vote is under 18 years of age

____ The person seeking to vote is not a United States Citizen

____ The person seeking to vote is not domiciled in the town or ward where he or she is seeking to vote (state persons true domicile —town/city)

____ The person seeking to vote is an incarcerated convicted felon who is currently sentenced to incarceration (state name of institution person is in)

____ This is a primary and the person seeking to vote in the (state political party name) _____ primary is not a declared member of the party he or she claims to be affiliated with

____ The person seeking to vote is ineligible to vote pursuant to the following state or federal statute or constitutional provision: _____

BASIS FOR THE CHALLENGE: The person making the challenge shall state the specific source of the information or personal knowledge upon which the challenge of the particular individual is based:

OATH: The person making the challenge shall complete the following:

I hereby swear and affirm, under the penalties of perjury, that to the best of my knowledge and belief the information above is true and correct.

(Signature of challenger)

On the date shown above, before me, _____ (print name of notary public, justice of the peace, election officer), appeared _____ (print name of person whose signature is being notarized), (known to me or satisfactorily proven (circle one)) to be the person whose name appears above, and he or she subscribed his or her name to the foregoing affidavit and swore that the facts contained in this affidavit are true to the best of his or her knowledge and belief.

Notary Public/Justice of the Peace/Official Authorized by RSA 659:30

TO BE COMPLETED BY THE MODERATOR: Ruling on the challenge:

If the ground at issue is age, citizenship, or domicile: The supervisors of the checklist have ruled that the challenged voter is: qualified as a voter; not qualified as a voter.

The moderator rules on challenges based on other grounds. The Moderator rules that the challenge is: well grounded; not well grounded. If it is ruled that the voter is not qualified or that the challenge is well grounded, the challenged person may vote only if he or she completes and swears to a challenged votes affidavit.

II. A challenge may be asserted only upon personal knowledge or other basis of probable cause that the challenged voter is ineligible to vote. No challenge may be accepted unless one of the following grounds is asserted and specific facts are offered in support of such grounds:

- (a) The person seeking to vote is not the individual whose name he or she has given.
- (b) The person seeking to vote has already voted in the election at the time and place specified in the challenge.
- (c) The person seeking to vote is disqualified as a voter by conviction of a willful violation of the elections laws, such conviction having been for the offense specified in the challenge.
- (d) The person seeking to vote is under 18 years of age.
- (e) The person seeking to vote is not a United States Citizen.
- (f) The person seeking to vote is not domiciled in the town or ward where he or she is seeking to vote because the person's true domicile is in the town or city specified in the challenge.
- (g) The person seeking to vote is an incarcerated convicted felon who is currently sentenced to incarceration in the institution specified in the challenge.
- (h) The person is attempting to vote in a primary and the person is not a declared member of the party with which he or she claims to be affiliated.
- (i) The person is ineligible to vote pursuant to some other state or federal statute or constitutional provision specified in the challenge.

3 Absentee Ballots; Announcement by Moderator and Challenges. Amend RSA 659:50 and RSA 659:51 to read as follows:

659:50 Announcement by Moderator. The moderator shall begin processing absentee ballots by clearly announcing that he **or she** is about to open the envelopes which were delivered to him **or her**. The moderator shall then remove the affidavit envelope containing the ballots of each absentee voter and shall compare the signature on the affidavit envelope with the signature on the application for the ballot. If:

- I. The name of the voter is on the checklist, **except for voters provided for in RSA 7:46**; and
- II. The affidavit on the envelope appears to be properly executed; and
- III. The signature on the affidavit appears to be executed by the same person who signed the application; and
- IV. The signatures appear to be the signatures of a duly qualified voter who has not voted at the election; then the moderator shall publicly announce the name of the

absentee voter, **except for voters provided for in RSA 7:46**. If these conditions are not met, the moderator shall follow the procedure provided in RSA 659:53.

659:51 Challenges.

I. All absentee ballots are subject to challenge after the moderator publicly announces the name of the absentee voter, **except for voters provided for in RSA 7:46**, but not after the ballot is removed from the envelope. ~~[A person who makes a challenge shall state the reason for the challenge.]~~ **No challenge to an absentee ballot may be asserted except in conformity with the requirements of RSA 659:27-a.**

II. If the ballot is challenged, the moderator shall write on the affidavit envelope containing the ballot the word "challenged" and the name and address of the person who makes the challenge and the basis of the challenge. The moderator shall also number each challenged envelope consecutively by marking, for example, the first challenged ballot "Challenged Ballot No. 1".

III. The moderator shall then determine if the challenge to the ballot is well grounded. If the moderator decides the challenge is well grounded, he **or she** shall not open the envelope but shall preserve it with the other ballots cast at the election as provided in RSA 659:101. If the moderator decides that the challenge is not well grounded, he **or she** shall open the affidavit envelope so the affidavit thereon is not destroyed and proceed first to mark on the reverse of the folded ballot the corresponding challenge number as previously marked on the envelope. [He] **The moderator** shall then proceed to deposit the ballot as provided in RSA 659:52.

4 Effective Date. This act shall take effect January 1, 2010.

LBAO

09-0136

01/07/09

HB 276-FN - FISCAL NOTE

AN ACT relative to challenges of voters.

FISCAL IMPACT:

The Judicial Branch, the Judicial Council, and the New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2010 and each year thereafter. There will be no fiscal impact on local expenditures or state, county, and local revenue.

METHODOLOGY:

The Judicial Branch states this bill establishes additional guidelines for challenging voter qualifications and establishes a class A misdemeanor for individuals that engage in prohibited challenges. The Judicial Branch states it has no information to estimate how many class A misdemeanor charges would be brought as a result of this bill. The Branch states the cost of a class A misdemeanor in the district court is \$51.14 in FY 2010 and each year thereafter. The Branch estimates it would take 196 cases in FY 2010 and each

year thereafter to have a fiscal impact exceeding \$10,000. The possibility of appeals makes the number of cases needed for a fiscal impact over \$10,000 significantly fewer. Judicial Branch statistics show, however, that from January 1, 1999 to June 30, 2008, five charges of violation of Chapter 659 have been brought in the district courts. Based on that historic volume, the Judicial Branch does not anticipate a significant fiscal impact.

The Judicial Council states this bill may result in increased general fund expenditures but cannot predict the number of violations therefore the fiscal impact cannot be determined at this time. The Council states if an individual is found to be indigent, the flat fee of \$275 per misdemeanor is charged by a public defender or contract attorney. If an assigned counsel attorney is used, the fee is \$60 per hour with a cap of \$1,400. A juvenile misdemeanor case is \$275 through disposition, plus \$137 for each review hearing following disposition. Assigned counsel attorneys for juvenile cases will be \$60 per hour with a fee cap of \$1,700 through disposition, and the maximum fee for court review hearings of juvenile cases is \$300. These fee caps may be waived upon motion filed in advance and approved by the court, and such motions are routinely granted. The Council states additional costs could be incurred if an appeal is filed. The public defender, contract attorney, and assigned counsel rates for Supreme Court appeals will be \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. However, such motions to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal.

The New Hampshire Association of Counties states to the extent any individual is prosecuted, convicted, and sentenced to incarceration, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be detained or incarcerated as a result of this bill. The average annual cost to incarcerate an individual in a county facility is \$30,165.