

HB 1370-FN - AS AMENDED BY THE SENATE

05/16/2024 1903s

2024 SESSION

24-2447

12/10

HOUSE BILL ***1370-FN***

AN ACT relative to eliminating voter identification exceptions.

SPONSORS: Rep. Wherry, Hills. 13; Rep. Burnham, Straf. 2; Rep. Wood, Merr. 13; Rep. H. Howard, Straf. 4; Rep. Aures, Merr. 13; Rep. K. Perez, Rock. 16; Rep. Panek, Hills. 1

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill removes any exceptions for proving voter identification. This bill also removes the voter affidavits as proof of identification and repeals the procedures for affidavit ballots.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to eliminating voter identification exceptions.

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

1 Determining Qualifications of Applicant; General Voter Registration. RSA 654:12 is repealed and reenacted to read as follows:

654:12 Determining Qualifications of Applicant.

I. When determining the qualifications of an applicant desiring to register to vote in New Hampshire for the first time, whether the applicant seeks to register before election day or on election day, the supervisors of the checklist, or the town or city clerk, shall require the applicant to present proof of citizenship, age, domicile, and identity as provided in the following categories:

(a) CITIZENSHIP. The supervisors of the checklist, or the town or city clerk, shall accept from the applicant any one of the following as proof of citizenship: the applicant's birth certificate, passport, naturalization papers if the applicant is a naturalized citizen, or any other reasonable documentation which indicates the applicant is a United States citizen. (b) AGE. Any reasonable documentation indicating the applicant will be 18 years of age or older at the next election.

(c) DOMICILE.

(1) A person who possesses one of the following qualified documents identifying the applicant's name and the address claimed as domicile must present that document when applying for registration: (i) New Hampshire driver's license or identification card issued under RSA 260:21, RSA 260:21-a, or RSA 260:21-b; (ii) New Hampshire resident vehicle

registration; (iii) a picture identification issued by the United States government that contains a current address; (iv) a government issued check, benefit statement, or tax document.

(2) A person who attests under penalty of voter fraud that they do not possess any of the qualified documents listed in subparagraph (c)(1) may present any reasonable documentation of having established a physical presence at the place claimed as domicile, having an intent to make that place their domicile, and having taken a verifiable act to carry out that intent. The documentation must establish that it is more likely than not that the applicant has a domicile and intends to maintain that domicile, as defined in this chapter, at least until election day, in the town or ward in which they desire to vote. Reasonable documentation may include, but is not limited to, evidence of:

(A) Having established domiciliary at the location of an institution of learning the applicant attends, as set forth in RSA 654:1, I-a;

(B) Renting or leasing an abode at that place for a period of more than 30 days, to include time directly prior to an election day;

(C) Purchasing an abode at that place;

(D) Enrolling the applicant's dependent minor child in an established public or private elementary or secondary school which serves the town or ward of that place, using the address where the registrant resides;

(E) Listing that place as the person's physical residence address on state or federal tax forms, other government identification showing the address, or other government forms showing the address;

(F) Providing the address of that place to the United States Post Office as the person's permanent address, provided it is not a postal service or commercial post office box;

(G) Obtaining public utility services for an indefinite period at that place; or

(H) Arranging for a homeless shelter or similar service provider located in the town or ward to receive United States mail on behalf of the individual.

(I) Any other reasonable documentation which establishes that it is more likely than not that the applicant is domiciled at the address in the town or ward in which the applicant desires to vote. An applicant whose domicile is at an abode of another and whose name is not listed on the document offered as proof of domicile may provide a written statement from a person who is listed as owner, property manager, or tenant on the document that the applicant resides at that address, signed by that person under penalty of voting fraud if false information is provided.

(d) **IDENTITY.** Any one of the following is presumptive evidence of the identity of an applicant sufficient to satisfy the identity requirement of this section:

(1) Photo driver's license issued by any state or the federal government.

(2) United States passport, armed services identification, or other photo identification issued by the United States government.

(3) Photo identification issued by local or state government.

(4) Any other evidence that reasonably establishes that it is more likely than not that the person is who they claim to be, including verification of the person's identity by the moderator or another election official.

Residents of a nursing home or similar facility may prove their identity through verification of identity by the administrator of the facility or by his or her designee. For the purposes of this section, the application of a person whose identity has been verified by an official of a nursing home or similar facility shall be treated in the same manner as the application of a person who proved his or her identity with a photo identification.

II. The evidence described or presumptions established in paragraph I may be confirmed or defeated by evidence establishing that it is more likely than not that the applicant is or is not qualified as a voter.

(a) Notwithstanding laws to the contrary, data contained in state databases may be used by the secretary of state or other state agencies to verify the information requested of the applicant when registering to vote for the first time or to prove identity when the applicant has not provided sufficient documentation.

(b) On election day, the secretary of state shall coordinate a group of state agencies which shall include individuals from the secretary of state, the attorney general, the department of motor vehicles, and any other agencies determined necessary by the secretary of state. Their responsibilities shall include providing real time verification of data request of applicants on voter registration forms and proof of identity when the applicant or voter has not presented sufficient documentation.

III. Any person who is applying for registration as a voter and who is currently or was registered to vote in a different town or ward in New Hampshire shall complete the voter registration form provided for in RSA 654:7. If the election official receiving the application confirms through the centralized voter registration database required by RSA 654:45 that the applicant is currently registered to vote in New Hampshire, the applicant shall prove identity and domicile, but shall not be required to prove his or her age or citizenship.

IV. A person who has registered to vote in the town or ward in which the person seeks to vote prior to election day need not provide proof of citizenship, age, or domicile at the polling place on election day, but shall provide proof of identification establishing that he or she is the same person who previously registered to vote.

V. Any dispute as to whether a person has met the requirements to register to vote or to vote shall be decided by the election official of the town or ward in charge of voter registration or in charge of the polling place if the dispute arises at the polling place. A person aggrieved by the decision of said official may take an immediate appeal to the superior court, which shall hear the appeal forthwith and shall make every reasonable effort to decide the matter prior to noon on the last day for candidates to request a recount. The aggrieved person may be given a ballot in accordance with RSA 659:23-a.

VI. The secretary of state shall train and provide assistance to election officials in the use of official records that may be used to verify the qualification documents presented by the applicant.

2 General Voter Registration; Voter Registration Form. RSA 654:7 is repealed and reenacted to read as follows:

654:7 Voter Registration; Voter Registration Form.

I. Any person registering to vote shall be:

- (a) At least 18 years of age on the day of the next election; and
- (b) A United States citizen; and
- (c) Domiciled in the town or city in which the applicant is registering to vote and not otherwise disqualified to vote.

II. The applicant shall be required to produce appropriate proof of qualifications as provided in RSA 654:12 and fill out the form as prescribed in paragraph III.

III.(a) Standard registration application forms shall be used throughout the state. The registration forms shall be no larger than 8 ½ inches by 11 inches.

(b) The secretary of state shall prescribe the form of the voter registration form to be used for voter registrations, transfers, or updates, which shall be in substantially the following form:

___ NEW REGISTRATION I am not registered to vote in New Hampshire

___ TRANSFER I am registered to vote in New Hampshire and have moved my voting domicile to a new town or ward in New Hampshire

___ NAME CHANGE/ADDRESS UPDATE I am registered to vote in this town/ward and have changed my name/address

Date _____

VOTER REGISTRATION FORM

(Please print or type)

1. Name

Last (suffix) First Full Middle Name

2. Domicile Address

Street Ward Number

Town or City Zip Code

3. Mailing Address if different than in 2

Street

Town or City Zip Code

4. Place and Date of Birth

Town or City State

Date _____

5. Are you a citizen of the United States? Yes _____ No _____

If a naturalized citizen, give name of court where and date when naturalized

6. Place last registered to vote

Street Ward Number

I am not currently registered to vote elsewhere (initial here _____), or I request that my name be removed as a registered voter in _____ (fill in your address where previously registered, street, city/town, state, and zip code)

7. Name under which previously registered, if different from above

8. Party Affiliation (if any)

9. Driver's License Number or nondriver's picture identification card number

State

_____ Check here if you do not have a drivers license or a nondriver's picture identification card

The last four digits of your social security number _____

My name is _____. I am today registering to vote in the city/town of _____, New Hampshire. If a city, ward number _____.

I understand that to vote in this ward/town, I must be at least 18 years of age, I must be a United States citizen, and I must be domiciled in this ward/town.

I understand that a person can claim only one state and one city/town as his or her domicile at a time. I understand that my domicile for voting is that one place from which I participate in democratic self-government and that I have acted to carry out that intent. By registering or voting today, I am acknowledging that I am not domiciled or voting in any other state or any other city/town.

In declaring New Hampshire as my domicile, I realize that I am not qualified to vote in the state or federal elections in another state.

If I have any questions as to whether I am entitled to vote in this city/town, I am aware that a supervisor of the checklist is available to address my questions or concerns.

I acknowledge that I have read and understand the above qualifications for voting and do hereby swear, under the penalties for voting fraud set forth below, that I am qualified to vote in the above-stated city/town, and, if registering on election day, that I have not voted and will not vote at any other polling place this election.

Date _____ Signature of Applicant _____

In accordance with RSA 659:34, the penalty for knowingly or purposely providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

3 General Voter Registration; Registering at the Polling Place; Election Day Registration. RSA 654:7-a is repealed and reenacted to read as follows:

654:7-a Registering at the Polling Place; Election Day Registration.

I. Any person whose name is not on the checklist, but who is otherwise a qualified voter shall be entitled to vote by requesting to be registered to vote at the polling place on election day. The applicant shall be required to produce appropriate proof of qualifications as provided in RSA 654:12. If registered, the voter may then vote at that election.

II. Any person who is waiting to register to vote at the polling place on election day at the time scheduled for the closing of the polls shall be allowed to vote if determined to be qualified to register.

4 Election Procedure; 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 it is more likely than not that the challenge is well grounded, the moderator shall not receive the vote of the person so challenged. If the moderator determines that the challenge is not well grounded, the moderator shall permit the voter to vote. The secretary of state shall provide assistance to moderators in reviewing the challenge.

5 Challenges; Asserting a Challenge. RSA 659:27-a is repealed and reenacted to read as follows:
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 person's true domicile--town/city)

☐ The person seeking to vote is not domiciled at the address listed for that person on the checklist

☐ 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, domicile, or identity: The supervisors of the checklist have ruled that the challenged voter is: Qualified as a voter; not qualified as a voter (circle one).

The moderator rules on challenges based on other grounds: The moderator rules that the challenge is: well grounded; not well grounded (circle one).

Signature of Moderator or Election Official

II.(a) 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:

- (1) The person seeking to vote is not the individual whose name he or she has given.
- (2) The person seeking to vote has already voted in the election at the time and place specified in the challenge.
- (3) 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.
- (4) The person seeking to vote is under 18 years of age.
- (5) The person seeking to vote is not a United States citizen.
- (6) 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.
- (7) The person seeking to vote is not domiciled at the address listed for that person on the checklist.
- (8) The person seeking to vote is an incarcerated convicted felon who is currently sentenced to incarceration in the institution specified in the challenge.
- (9) 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.
- (10) The person is ineligible to vote pursuant to some other state or federal statute or constitutional provision specified in the challenge.

(b) Before ruling on the challenge, the moderator shall give the challenged voter an opportunity to be heard. A person aggrieved by the moderator's decision on a voter challenge may obtain a review of the decision in the superior court pursuant to RSA 654:12, V.

6 Obtaining a Ballot; Affidavit Ballots Removed. RSA 659:13, I(c) is repealed and reenacted to read as follows:

- (c)(1) If the voter does not have a valid photo identification, the ballot clerk shall direct the voter to see the supervisor of the checklist.
- (2) The supervisor of the checklist shall review the voter's qualifications and determine if the voter's identity can be verified.

If the supervisor of the checklist determines that the voter's qualifications and identity are established, the voter shall be allowed to vote. If the supervisor of the checklist determines that the voter's qualifications and identity have not been established, the voter shall not be allowed to vote. A voter not allowed to vote as a result of the determination of the supervisor of the checklist may take an appeal to the superior court as provided in RSA 654:12, V.

7 Election Procedure; Challenges; Record by Clerk. RSA 659:32 is repealed and reenacted to read as follows:

659:32 Record by Clerk. The town clerk shall record the name and domicile of all challenged voters, the name and domicile of the person who challenged each such voter, the reason for each challenge, and the ruling on each challenge by the moderator or election official.

8 Election Fund; Cross Reference Removed. Amend RSA 5:6-d, III to read as follows:

III. The secretary of state is authorized to accept, budget, and, subject to the limitations of this paragraph, expend monies in the election fund received from any party for the purposes of conducting elections, voter and election official education, the purchase or lease of equipment that complies with the Help America Vote Act of 2002, Public Law 107-252~~[, or with RSA 659:13, V,]~~ reimbursing the department of safety for the actual cost of voter identification cards, election law enforcement, enhancing election technology, making election security improvements, and improvements to related information technology, including acquisition and operation of an automated election management system. With the exception of federal and state portions of funds associated with the 2018 Election Reform Program, the secretary of state shall not expend any monies in the election fund unless the balance in the fund following such expenditures shall be at least 12 times the estimated annual cost of maintaining the programs established to comply with the Help America Vote Act of 2002, Public Law 107-252.

9 Ballots Pending Judicial Review. RSA 659:23-a is repealed and reenacted to read as follows:

659:23-a Ballots Pending Judicial Review.

Persons aggrieved by the decision of an election official which denies that person the opportunity to vote may cast a ballot pending judicial review which shall be processed as follows:

I. An authorized election official shall hand the voter a ballot pending judicial review package and explain its use. This package shall be designed, produced, and distributed by the secretary of state, and shall contain a ballot, a ballot pending judicial review request and instructions for its use.

II. The moderator shall mark each ballot pending judicial review "ballot pending judicial review #_____" sequentially starting with the number one.

III. All ballots pending judicial review shall be placed in a designated container and hand counted after polls have closed using a method prescribed by the secretary of state for hand counting and confirmation of candidate vote totals. After completion of counting, the moderator shall note and announce the total number of votes cast for each candidate, and the total number of ballots pending judicial review requests cast in the election. No later than one day after the election, the moderator shall forward a copy of the requests for a ballot pending judicial review to the secretary of state using a secure means of transmission or delivery.

IV. If the voter who has cast a ballot pending judicial review does not obtain a court order that their ballot shall be counted by noon on the last day for candidates to request a recount, then the votes cast on such unqualified ballots pending judicial review shall be deducted from the vote total for each affected candidate or each affected issue.

V. The total vote minus the unqualified ballot pending judicial vote for each race or issue shall be the final vote to be certified by the appropriate certifying authority.

VI. All written documentation relating to ballots pending judicial review shall be in sealed packages, use a secure means of transportation, and be stored pursuant to RSA 659:95 through RSA 659:103.

10 Ballots Pending Judicial Review; Recounts. RSA 660:17-a is repealed and reenacted to read as follows:

660:17-a Ballots Pending Judicial Review; Recounts.

In any election or referendum recount only those ballots pending judicial review that have a court order that the ballot is to be counted shall be counted during the recount.

11 Appropriation; Secretary of State. There is hereby appropriated to the secretary of state the sum of \$1 for the fiscal year ending June 30, 2025 for the purpose of determining the qualifications of voters. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

12 Repeal. RSA 659:13, III, IV, and V, relative to affidavit ballots and the secretary state, is repealed.

13 Effective Date. This act shall take effect upon its passage.

LBA
24-2447
11/6/23

HB 1370-FN- FISCAL NOTE AS INTRODUCED

AN ACT relative to durable and tamper-proof containers for preserving 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
<i>Revenue Fund(s)</i>	None			
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<i>Funding Source(s)</i>	General Fund			
Appropriations	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	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
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	\$0 - \$10,000	\$0 - \$10,000	\$0 - \$10,000

METHODOLOGY:

This bill requires the Secretary of State to prepare and provide, to each town and ward clerk, ballot preserving containers which are secure, durable, reusable, transportable, and stackable.

The Department of State indicates the current distribution to the town and ward clerks include custom-sized cardboard boxes, red tape designed to be tamper-evident, and sealers that necessitate signatures, although they lack tamper-evident features. Currently, the Department ships electronic ballot-counted ballots in custom-sized boxes to prevent damage, considering ballot sizes and quantities. For manual count towns, folded ballots are transported in the smallest available boxes. Due to the multiple sized and custom boxes needed to comply with this bill the Department would need to contract with a reusable, lockable container manufacturer to purchase the boxes.

The Department notes, RSA 33-A:3-a, XXXVI mandates the retention of federal election ballots and related documents by town clerks until the contest is resolved or at least 22 months after the election, whichever is longer. The secretary of state anticipates procuring reusable containers for the initial 5 elections (1 presidential primary, 2 state primaries, and 2 state general elections), with minimal additional purchases afterward for

replacements or increased ballot shipments, provided municipalities return the reusable containers after the retention period.

The Department assumes the cost to coordinate the return shipment of all state elections containers would be bore by the Department as well as the increased cost from the change in the container resulting in increased shipping costs from and to the Department. The exact cost is currently unknown. The Department plans to solicit proposals for lockable, durable, reusable, transportable, and stackable containers, along with container locks and tamper-evident sealers. However, the costs for these new containers, locks, and sealers cannot be determined at this time but would result in an indeterminable increase to State General Funds starting in FY 2025.

The New Hampshire Municipal Association states to comply with the bill they would need training, but it is assumed the Department of State would cover this costs. Any other incidental costs would be minimal.

AGENCIES CONTACTED:

Department of State and New Hampshire Municipal Association