CHAPTER 665

BALLOT LAW COMMISSION

General Provisions

665:1 Organization. I. There shall be a ballot law commission consisting of 5 members. Two members shall be appointed by the speaker of the house of representatives, one from each of the 2 major political parties in the state based on votes cast for governor in the most recent state general election. Two members shall be appointed by the president of the senate, one from each of the 2 major political parties in the state based on votes cast for governor in the most recent state general election. One member shall be appointed by the governor with the advice and consent of the council, and shall be a person particularly qualified by experience in election procedure. No person shall be appointed to the commission who holds an elected office or who is an election official. The terms of all commissioners shall be for 4 years, except that the first appointments shall be as follows: the members appointed by the speaker of the house of representatives shall be appointed for terms of 2 years, the members appointed by the president of the senate shall be appointed for terms of 3 years, and the member appointed by the governor shall be appointed for a term of 4 years. A member may be re-appointed upon the expiration of his or her term. The members shall elect annually a chairperson from among the members. Members shall be appointed and terms of office shall expire on July 1. Vacancies shall be filled in the same manner for the unexpired term. The secretary of state shall be recording officer and clerk of the commission, but shall have no vote in its decisions.

II. There shall be 5 alternate members for the ballot law commission. Two alternate members shall be appointed by the speaker of the house of representatives, one from each of the 2 major political parties in the state based on votes cast for governor in the most recent state general election. Two alternate members shall be appointed by the president of the senate, one from each of the 2 major political parties in the state based on votes cast for governor in the most recent state general election. One alternate member shall be appointed by the governor with the advice and consent of the council, and shall be a person particularly qualified by experience in election procedure. The alternate members appointed by the speaker of the house of representatives and the president of the senate shall not be members of the general court. The terms of all alternate members shall be for 4 years, except that the first appointments shall be as follows: the alternate members appointed by the speaker of the house of representatives shall be appointed for terms of 2 years, the alternate members appointed by the president of the senate shall be appointed for terms of 3 years, and the alternate member appointed by the governor shall be appointed for a term of 4 years. The term of each new alternate member shall begin on July 1.

665:2 Alternate Member. There shall be 5 members present in person at all meetings. In case any member of the commission is absent from any meeting or unable to perform his or her duties or disqualifies himself or herself as commissioner, an alternate member who shall have the same qualifications as those of the commissioner whose place he or she is temporarily filling shall perform the duties of the commissioner.

665:3 Political Contributions Prohibited. No ballot law commission member shall make a contribution, as defined in RSA 664:2, to any candidate for office or political committee.

665:4 Compensation. The commissioners shall receive such compensation for their services as shall be approved by the governor and council. All bills for supplies required by the commission, necessary expenses of the commissioners, and fees of witnesses summoned by the commission shall be paid by the state upon the approval of the governor and council.

665:5 Hearing Date. I. If necessary, the ballot law commission shall meet on the third Thursday of September in each general election year and the third Friday following the presidential primary election in order to hear and decide:

(a) Written objections filed pursuant to RSA 665:6, I and II; and

(b) Written appeals filed pursuant to RSA 665:8, I.

II. The ballot law commission shall meet on the fourth Monday in November in each general election year. The commission shall hear and decide all pending matters concerning the election of persons to the New Hampshire general court. At this time, the commission may also act on any other pending matters.

III. The ballot law commission shall also meet at such other times as may be necessary as provided in RSA 655:31, RSA 665:8, II, and RSA 665:9

Jurisdiction

665:6 General Duties. The ballot law commission shall have jurisdiction in the following cases: I. When the nominations at the primary, as declared pursuant to RSA 659:86-89, are in apparent conformity with law, they shall be valid unless changed upon recount as provided by law or unless written objection to their conformity with the law shall be filed with the secretary of state within 3 days of the date of publication of the results of the primary by the secretary of state under RSA 659:89; or, if there is a recount for the office in question, within 3 days after the declaration of the secretary of state upon such recount. If written objections are filed, the secretary of state shall forthwith notify the ballot law commission of such filing. The ballot law commission shall then meet as provided in RSA 665:5 in order to hear and decide all the objections. The decision of the ballot law commission in such cases shall be final as to questions both of law and fact, and no court shall have jurisdiction to review such decision.

II. When nomination papers as provided in RSA 655:40-43 or the filling of vacancies in nominations occurring after the primary as provided in RSA 655:37-39 are in apparent conformity with law, they shall be valid unless written objection to their conformity with the law shall be filed with the secretary of state within the time limit provided in RSA 655:44 in the case of nominations by nomination papers or within 3 days of the date on which the appointment to fill a vacancy is filed with the secretary of state in the case of filling vacancies in nominations. If written objections are filed, the secretary of state shall forthwith notify the ballot law commission of the filing. The ballot law commission shall then meet as provided in RSA 665:5 in order to hear and decide all the objections. The decision of the ballot law commission in such case shall be final as to questions both of law and fact, and no court shall have jurisdiction to review such decision.

III. The jurisdiction vested in the ballot law commission under paragraph I and II of this section shall be exclusive of all other remedies.

665:7 Filing Disputes. The ballot law commission shall hear and determine disputes arising over whether nomination papers or declarations of candidacy filed with the secretary of state conform with the law. The decision of the ballot law commission in such cases shall be final as to questions both of law and fact, and no court shall have jurisdiction to review such decision.

665:8 Appeals from Recounts. The ballot law commission shall hear and determine appeals from recounts in the following cases:

I. In case of a primary recount as provided in RSA 660:7-9-a, any person voted for upon the ballot of any party who, by declaration of the secretary of state upon recount, was not chosen as the candidate of such party may, within 3 days after said declaration, appeal therefrom to the ballot law commission by filing a written appeal with the secretary of state. The secretary of state shall forthwith notify the ballot law commission of the filing. The ballot law commission shall then meet as provided in RSA 665:5 in order to hear and decide the appeal and shall, on the appeal, consider and review all the rulings of the secretary of state on ballots protested during the recount. In no case may the ballot law commission order a second recount. If, after the review, it shall appear that the appellant was nominated, the commission shall change the declaration of the secretary of state and issue a certificate of nomination to the appellant. The decision of the ballot law commission in such cases shall be final as to questions both of law and fact, and no court shall have jurisdiction to review such decision. The jurisdiction vested in the commission under this paragraph shall be exclusive of all other remedies**.**

II. In case of an election recount as provided in RSA 660:1-6, any candidate who, by declaration of the secretary of state upon recount, did not have the greatest number of votes may, within 3 days after said declaration, appeal therefrom to the ballot law commission by filing his written appeal with the secretary of state. The ballot law commission shall forthwith meet, hear, and decide such appeal and shall, on such appeal, consider and review all the rulings of the secretary of state on ballots protested during the recount. In no case may the ballot law commission order a second recount. If, after the review, it shall appear that the appellant had the greatest number of votes, the commission shall change the declaration of the secretary of state and issue a certificate of such changed declaration to the appellant. The decision of the ballot law commission under this paragraph shall be subject to appeal as provided in RSA 665:16. The

jurisdiction vested in the commission under this paragraph shall be exclusive of all other remedies. Nothing contained in this paragraph shall be construed to bar any person from recourse to the superior court on other questions, within the jurisdiction of such court, relating to the legality or regularity of general elections or the results thereof.

665:9 Name on Ballot Disputes. The ballot law commission shall hear and determine all disputes arising over the form of his or her name which a candidate designates to be printed on the state primary and state general election ballot, as provided in RSA 655:14-b. The decision of the ballot law commission shall be final as to questions of both law and fact, and no court shall have jurisdiction to review the decision.

665:9-a Administrative Complaint Resolution. The ballot law commission shall hear and resolve complaints of federal voting law violations, pursuant to the Help America Vote Act of 2002, Public Law 107-252, as provided in RSA 666:14.

Procedures

665:10 Rules. The commission shall have power to adopt and publish rules to govern its proceedings and to regulate the mode and manner of all hearings or proceedings before it. Said rules shall be published and made available at the office of the secretary of state. All hearings shall be open to the public.

665:11 Evidence. In any hearing, the commission shall not be bound by the technical rules of evidence; but its findings must be supported by reliable, probative, and substantial evidence. A stenographic transcript shall be made of all oral testimony submitted to the commission; and such transcript together with the exhibits, ballots, and papers filed in the proceedings shall be the exclusive record of its decision. Decisions of the commission shall be made in writing and filed with the secretary of state. Reasonable notice of all hearings before the commission shall be given by the secretary of state by registered mail. In cases of recount appeals under RSA 665:8, notice shall be given to all candidates for the particular nomination or office in question. In cases arising under RSA 665:6, notice shall be given to the person or persons filing objections and to the candidate or candidates to whose nomination objections have been filed. At all hearings, interested parties may appear, present relevant evidence, be represented by counsel, and cross-examine opposing witnesses. The records of the commission in any proceeding before it shall be preserved for at least 6 months after the election in question.

665:12 Subpoenas; Oaths. The commission shall have power to subpoena witnesses and administer oaths in any proceeding before it and to compel by subpoena duces tecum the production of any checklist, tally sheet, or other document or thing of any kind whatever.

665:13 Witness Fees. Witnesses summoned before the commission shall be paid the same fees as witnesses summoned to appear before the superior court, and such summons issued by any justice of the peace shall have the same effect as though issued for appearance before such court.

665:14 Testimonial Privilege. No witness in any proceeding before the commission shall be excused from giving testimony or producing documentary evidence upon the ground that such testimony or documentary evidence could tend to incriminate the witness; but, if the witness claims immunity hereunder, no such testimony or documentary evidence shall be used against him or her in any criminal prosecution; nor shall the witness be liable to criminal prosecution for any matter disclosed thereby.

665:15 Perjury. No person testifying before the commission shall be exempt from prosecution or punishment for any perjury committed by him or her in his or her testimony.

Appeal

665:16 Appeal From Decisions. There may be an appeal to the supreme court from the decisions of the ballot law commission made under RSA 665:8, II as provided in this section and not otherwise. Such appeal shall be filed with the clerk of the supreme court within 5 days after the decision of the commission is filed with the secretary of state. Such

appeal shall be limited to questions of law. Findings of fact made by the commission shall be final if supported by the requisite evidence. The supreme court may hold a special session to consider such appeal if it considers such action necessary. Appeals under this section shall be limited to contested elections for the offices of presidential elector, governor, councilor, and town and city or city ward offices voted for at general elections. No appeal may be made under this section in the cases of contested elections for the offices of United States senator, representative in congress, state senator, or representative to the general court in view of the constitutional provisions vesting in both houses of congress and both houses of the general court exclusive jurisdiction over the elections and qualifications of their respective members.

Enforcement

665:17 Enforcement of Orders of Ballot Law Commission. The superior court shall have jurisdiction in equity to enforce any order of the ballot law commission issued hereunder