

CHAPTER 656

PREPARATION OF VOTING MATERIALS

General Provisions

656:1 General Responsibility. Ballots for use in all state elections shall be prepared and delivered by the secretary of state at the expense of the state.

656:1-a Paper Ballots. For purposes of facilitating the examination and recounting of votes cast, all elections shall be conducted using paper ballots in accordance with this title

656:2 Prohibitions. No person engaged in preparing or printing a state election ballot shall purloin, give away, or allow to be removed any such ballot. Whoever knowingly violates this provision shall be guilty of a misdemeanor if a natural person or shall be guilty of a felony if any other person.

State General Election

656:3 Preparation. At least 6 days before any state general election is to be held, the official state general election ballot shall be sent by the secretary of state to the city and town clerks.

656:4 Name and Domicile. Every state general election ballot shall contain the name of each candidate who has been nominated in accordance with the election laws, except as hereinafter provided, and shall contain no other name except party appellations. The names and addresses of the presidential electors shall not be printed on the ballot; but, in lieu thereof, the names of a party's candidates for president and vice-president shall be printed thereon under the designation for "President and Vice-President of the United States".

656:5 Party Columns. I. The names of all candidates nominated in accordance with the election laws shall be arranged upon the state general election ballot in successive party columns. Each separate column shall contain the names of the candidates of one party; except that, if only a part of a full list of candidates is nominated by a political party, 2 or more such lists may be arranged whenever practicable in the same column. The party columns that list the names of candidates for offices that elect more than one person shall stagger the names of the candidates so that they do not line up evenly in a horizontal direction. The left-most column shall begin one line below the column to its right. The secretary of state shall determine the vertical location of any additional columns that may appear on the ballot.

II. The position of party columns shall be rotated on the ballots used so that each party column shall appear thereon, to the extent practicable, an approximately equal number of times in the first, last, and each intermediate column position across the state, without requiring more than one unique column order or ballot format for each town, ward, or unincorporated place. Starting with the general election for 2012 and following each new apportionment of representative districts, but before the close of the period during which a person may accept the nomination of a party committee pursuant to RSA 655:32, the secretary of state shall develop as many generic column rotation plans for use in general elections as he or she might reasonable expect to be needed for different possible numbers of party columns on the general election ballot. If the number of party columns expected on the general election ballot changes such that one or more additional generic column rotation plans are needed, the secretary of state shall, from time to time, prepare such additional plans as are needed for any general election.

III. The generic column rotation plans shall be based on a reasonable balanced rotation of party columns within and across all non-floterial state representative districts, those being the smallest representative districts to which each voting place is apportioned pursuant to part I, article 11 of the New Hampshire constitution. Consideration shall also be given to reasonably minimize any obvious, substantial, and avoidable imbalances in column rotation within senate districts. The average deviation from equal rotation for the first party column position, measured across the state as a whole and based on population according to the last decennial federal census, shall be as close to 0 percent as is practicable but in no event greater than 1 percent. Once generic column rotation plans are established the secretary of state shall publish such plans to the department's website.

IV. Immediately following the close of the period during which a person may accept the nomination of a party committee pursuant to RSA 655:32, the secretary of state or designee shall publicly select by lot the actual party columns

to be positioned according to the generic column rotation plan established pursuant to paragraphs II and III. No party shall be assigned the same generic party column designation for 2 consecutive general elections.

Preparation of State General Election Voting Materials; Order of Candidate Names on Ballots.

656:5-a. Order of Candidate Names on Ballots. I. Whenever there are 2 or more candidates for the same office whose names will appear together within the same column or list on a ballot, the position of such names shall be determined according to this section.

II. Immediately following the close of the period during which a person may accept the nomination of a party committee pursuant to RSA 655:32, the secretary of state or designee shall conduct a public random selection of a whole number from one to the total number of candidates for each possible list length where a group of candidates for the same office may appear in the same list in state or local elections during the next 2 years. For example, for a possible list of 3 candidates, the number one, 2, or 3 shall be randomly selected. The seed number for each possible list length shall remain in effect for the 2 years until the next random selection of seed numbers.

III. To determine the order of names on each ballot, the candidates for each office in the same list shall be temporarily listed alphabetically by surnames and the positions in such list shall be temporarily numbered in ascending order. The candidate whose position in the initial temporary list equals the seed number selected under paragraph II for the appropriate list length shall appear first on the ballot. The order of candidates after the candidate in the first position shall follow alphabetically by surname with “a” following “z”.

656:6 Designation of Office. Immediately to the left of the set of party columns shall be an offices column which shall list the offices, each preceded by the word “For,” for which the candidates whose names are listed in the party columns have been nominated, as in “For Governor.” Below each such phrase shall be printed in small but easily legible letters “Vote for not more than _____ (here insert a number designating how many persons are to be voted for).”

656:7 Order of Offices. The order of the officers on the ballot shall be as follows: president and vice-president of the United States, governor, United States senator, representative in congress, executive councilor, state senator, state representative and county officers.

656:7-a Order of Representative Districts. In places which are electing representatives to the general court from more than one district, the order of officers on the ballot for that place shall list the candidates for representative to the general court in the numerical order of the districts from which they are running with the lower numbered district being listed first.

656:8 Squares. Directly at the right of the name of each candidate there shall be a square, box, oval, or other appropriate symbol for directing voters where to make the appropriate mark; except that, in the case of president and vice-president of the United States, one square, box, oval, or other appropriate symbol shall suffice which shall be placed opposite the designation “President and Vice-President of the United States”.

656:9 Party Designation. Above each party column shall be printed in large, plain letters the name of the political party by which the candidates in such column were nominated.

656:10 Straight Ticket Voting. Repealed by Chapter 1, Laws of 2007.

656:11 Party Emblem. Repealed by Chapter 1, Laws of 2007.

656:12 Write-In Blanks. At the end of the list of candidates for each office, there shall be left as many blank lines as there are offices to be filled which a voter may use to write in the name of any person for whom the voter desires to vote.

656:13 Questions on the Ballot. Except as provided in RSA 656:14, whenever a question is submitted to voters at a state general election as provided in RSA 663, the question shall be printed on the state general election ballot following the offices columns. Printed after the question there shall be 2 squares or ovals, one with the word “yes” beside it and another with the word “no” beside it.

656:14 Constitutional Amendments. The question of whether to approve a proposed constitutional amendment may be submitted to the vote of the people at a state general election but may be on a special and separate ballot as provided in RSA 663:2.

656:15 Paper. The state general election ballot shall be printed on plain white paper in weight not less than that of ordinary printing paper. A constitutional question submitted on a separate ballot shall be printed on colored paper.

656:16 Uniformity; Folding. There shall be no impression or mark to distinguish one general election ballot from another. The names of all candidates shall be printed in uniform type, and the ballots for each town and city shall be such that their width and length when folded shall be uniform.

656:17 Endorsement. On each state general election ballot shall be printed the words "Official ballot for" followed by the name of the town for which the ballot is prepared, the date of the state general election and a facsimile of the signature of the secretary of state.

656:18 Sample Ballots. The secretary of state shall cause to be printed for each town 10 sample ballots. Such ballots shall be printed on tinted paper without facsimile endorsement but shall otherwise be identical to the state general election ballot. The sample ballots shall be forwarded as soon as printed to each town or ward clerk who shall post one copy in 2 public places in the town or ward within one day of their receipt and save the remainder to be posted on the day of the election as provided in RSA 658:26.

656:19 Number. At each state general election, the secretary of state shall furnish each town or city the state general election ballots in a number which the secretary of state shall deem sufficient for voting in the state general election.

656:20 Delivery of Ballots; Inspection. I. The secretary of state shall send the state general election ballots in a sealed package to the town and city clerks so they shall receive them no later than Tuesday immediately preceding the day of the state general election. The package shall be marked on the outside to clearly designate the town or city for which it is intended and the number of ballots enclosed. The secretary of state shall keep a record of the time when and the manner in which the packages were sent to the clerks and a record of the number of ballots so forwarded. A town or city clerk shall sign a receipt for the ballots received.

II. Each town or city clerk, prior to election day, shall open the package in which the ballots are enclosed, in the presence of at least one other legal voter, to verify that the ballots in the package are all the proper ballots for that town or city. The clerk and one other legal voter shall then reseal the package with the sealing label provided by the secretary of state.

656:21 Pastors; Substitute Candidates. In the event that a candidate dies or is disqualified as provided in RSA 655:38 or 655:39, the name of the substitute candidate shall be printed on the state general election ballot. If the state general election ballots have already been prepared and time will permit, the secretary of state may authorize adhesive slips or pasters with the name of the substitute candidate thereon to be printed and sent to the town or city clerks representing the territory wherein the deceased or disqualified candidate was to be voted for. Such paster shall be affixed to the ballots as provided in RSA 658:34. The name of the substitute candidate shall be received by the secretary of state no later than the Tuesday prior to the election in order for a substitute name to be placed on the ballot.

State Primary Election

656:22 Preparation. The official state primary election ballots shall be prepared by the secretary of state and shall be delivered by the secretary of state to town and city clerks so that the ballots shall be received not later than the Tuesday immediately preceding the state primary election. Each town and city clerk, in the presence of at least one other legal voter, shall verify the contents of the ballot package as provided under RSA 656:20 and reseal the ballots for use on election day.

656:23 General Form. The state primary election ballot shall be as nearly as practicable in the same form as the state general election ballot.

656:24 Order of Names. With the exception of the office of state representative, whenever there are 2 or more candidates for nomination to the same office, the names of such candidates shall be alternated on the state primary election ballots used so that each name shall appear thereon as nearly as may be an equal number of times at the top, at the bottom, and in each intermediate place, if any, of the list in which it belongs. Names of candidates for nomination to the office of state representative shall be arranged in the alphabetical order of their surnames according to the alphabetization procedure established in RSA 656:5-a

656:25 Color; Party Designation. The state primary election ballots of all parties shall be printed upon colored paper, but no ballots of any political party shall be printed upon paper of the same or a closely similar color as the ballots of another political party. On the back of each ballot shall be printed in prominent type the name of the party.

656:26 Number. The secretary of state shall furnish to each town or ward clerk the state primary election ballots of each political party in a number which the secretary of state shall deem sufficient for voting in the state primary.

656:27 Number for New Party. For the first state primary election at which a political party has candidates for nomination, the secretary of state shall print for said party a sufficient number of state primary election ballots which in the secretary of state's discretion shall most closely approximate the figures provided in RSA 656:26.

656:28 Sample Ballots. The secretary of state shall furnish 10 sample state primary election ballots of each political party printed on tinted paper to each town or ward clerk and, upon request, a reasonable number of such sample ballots to each person whose name appears upon the ballot as a candidate. Each town or ward clerk shall post one sample ballot of each political party in each of 2 public places in the clerk's town or ward within one day of receiving such sample ballots and save the remainder to be posted on the day of the primary as provided in RSA 658:26.

Presidential Primary Election

656:29 Preparation. The official presidential primary election ballot for each political party shall be sent by the secretary of state so as to be received by the city and town clerks no later than the Tuesday immediately preceding the presidential primary. Each town and city clerk, in the presence of at least one other legal voter, shall verify the contents of the ballot package as provided under RSA 656:20 and reseal the ballots for use on election day.

656:30 General Form. The presidential primary election ballot shall be as nearly as practicable in the same form as the state primary election ballot.

656:31 Form. On the presidential primary election ballot of each political party, there shall be one column for the office of president. The column shall be headed "Candidate of the (insert name of party) Party for President of the United States." Underneath this heading there shall appear the words: "I hereby declare my preference for candidate for the office of President of the United States to be as follows." Below these words, there shall be printed "(VOTE FOR NOT MORE THAN ONE)" followed by the name, town or city, and state of each candidate with boxes directly to the right. There shall always be one blank space on the ballot below the candidates' names to allow for writing in the name of a candidate.

656:32 Other Provisions. The provisions of RSA 656:24 - 656:28 relating to state primary election ballots shall apply to presidential primary ballots.

Commemorative Heading or Endorsement

The secretary of state may place a special heading or endorsement on presidential primary ballots commemorating the one hundredth anniversary of the New Hampshire presidential primary and the one hundredth anniversary of the New Hampshire "First-in-the-Nation" presidential primary. This authority shall expire on December 1, 2020. (Chapter 96, Laws of 2015)

Absentee Voters

656:33 Official Absence, Religious Observance, and Disability Absentee Ballots. Prior to any state election, the secretary of state shall prepare, in such quantity as the secretary of state may deem necessary, absence, religious observance, and disability absentee ballots in the same form as nearly as practicable as the official ballot to be used at said election. Said absentee ballots shall have the words "absentee ballot" printed on them and shall be similarly endorsed and printed on paper of the same color as that used for official ballots.

656:34 Federal Offices Only Absentee Ballot. Prior to any federal election, the secretary of state shall prepare, in such quantity as the secretary of state may deem necessary, federal offices only absentee ballots in paper and electronic form, similar in form to the official ballot to be used at said election. Said ballots shall have the words "federal offices only absentee ballot" on them and shall be endorsed and the paper version shall be printed on paper of the same color as that used for official ballots. Such ballots shall provide for voting absentee only for candidates seeking election to federal offices and for no other candidates.

656:35 Absentee Ballot for Uniformed Services Voters and Voters Temporarily Residing Outside the United States. Absent uniformed services voters and voters temporarily residing outside the United States shall be provided with the absentee ballot prepared under RSA 656:33, provided that the secretary of state shall prepare an electronic version of such ballot for use by any absent uniformed services voter or voter temporarily residing outside the United States who requests that his or her absentee ballot be transmitted to the voter electronically pursuant to RSA 657:19.

656:36 Questions on the Ballot. Whenever a question to voters is printed on an official state election ballot, the secretary of state shall ensure that said question is also on all applicable absentee ballots.

656:37 Constitutional Amendments. Whenever a question to voters related to a proposed constitutional amendment is placed on a separate ballot as provided in RSA 663:3, the question shall also be placed on a separate absentee ballot to be included with each absentee ballot other than federal offices only absentee ballots.

656:38 Forwarding Absentee Ballots. The secretary of state shall forward absentee ballots to the town and city clerks as provided in RSA 657:10.

Voters in Unincorporated Places

656:39 Preparation of Special Ballots. The secretary of state shall prepare special state election ballots for voters of unincorporated places as provided in RSA 668.

Electronic Ballot Counting Devices

656:40 Adoption. The mayor and aldermen of any city or the selectmen of any town, subject to the approval of the ballot law commission, may authorize the use of one or more electronic ballot counting devices for the counting of ballots in such city or town on a trial basis for any regular or special election and pay the expense of such trial from any available funds. The use of such devices so authorized shall be valid for all purposes. Any town, or the mayor and aldermen of any city, may vote to lease or purchase electronic ballot counting devices for the elections held in said town or city. Any town, or the mayor and aldermen of any city, so acting shall notify the secretary of state of the action taken in regard to electronic ballot counting devices; and, after said action, electronic ballot counting devices shall be used in said town or city in accordance with said vote or authorization. If a special state election involving a state representative district occurs in a city or town that has adopted the provisions of RSA 656:40, the secretary of state may prepare and issue paper ballots which shall be used.

656:41 Approval by Ballot Law Commission. The ballot law commission shall act as a board to examine devices for the electronic counting of ballots. The commission shall, whenever requested, examine any device which may be capable of meeting the requirements for elections held in this state. The commission shall approve such device in its discretion, and no device shall be used in any election in this state unless it reads the voter's choice on a paper ballot and is of a type so approved by the ballot law commission. Any device that is altered must be re-approved before it is used in

any election in this state. For the purposes of this section, a device shall be considered altered if any mechanical or electronic part, hardware, software, or programming has been altered.

656:42 Rules. 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 memory card, a metal bar covering the inserted memory card, a canvas cover closed by 2 zippers, 2 hard shell covers on the front of the device, a hard shell cover on the rear of the device, and 3 communication ports in the rear of the device.

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 card 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 card 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 2 zippers on the closed canvas cover of the counting device.

(B) The metal bar in front of the inserted memory card.

(C) Electronic ballot counting device housing:

(i) The seam connecting the 2 hard shell covers on the front of the counting device.

(ii) The seam connecting the hard shell cover on the rear of the counting device.

(iii) The 3 communication ports in the rear of the counting device.

(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 re-sealed 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 card from the vendor, the clerk shall break the memory card seal, insert the memory card in the electronic ballot counting device, and apply a new seal. The clerk shall lock any memory card 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 card from the electronic ballot counting device, the clerk shall immediately return it to the memory card programmer and reseal the metal bar in front of the empty memory card slot.

(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 cards in the possession of the town or city.

(11) Prior to placing the electronic ballot counting device or any memory card 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 card in the town or city clerk's possession, and that these devices and cards have passed the test.

656:43 Lease or Purchase. Any town or city authorizing the use of an electronic ballot counting device for the counting of ballots shall pay the cost of lease or purchase. When such a device is purchased by a town or city, the person from whom such device is purchased shall give to the secretary of state a suitable bond with sufficient sureties to keep such device in good working order for not less than 2 years at the seller's own expense.

656:43-a Replacement. Repealed by Chapter 70, Laws of 2009

656:44 Listing Names; Voting Machines.

Repealed Chapter 195, Laws of 1997