

# **BALLOT LAW COMMISSION**

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**CHAPTER Bal 100 DEFINITIONS, ORGANIZATION AND PUBLIC INFORMATION**

PART Bal 101 PURPOSE AND SCOPE

Bal 101.01 Purpose and Scope. The rules of this title implement the statutory responsibilities of the New Hampshire ballot law commission.

PART Bal 102 DEFINITIONS

Bal 102.01 Terms Used. As used in these rules, the following term shall have the meaning indicated:

(a) "Commission" means the New Hampshire Ballot Law Commission.

## PART Bal 103 ORGANIZATION AND OPERATIONS

Bal 103.01 Organization. The commission shall be organized in accordance with RSA 665:1.

Bal 103.02 Duties and Responsibilities. The commission shall have the duties and responsibilities set forth in RSA 665.

## PART Bal 104 PUBLIC INFORMATION

Bal 104.01 Record of Board Actions. Minutes shall be kept of commission meetings and of official actions taken by the commission. These minutes shall record those members who participate in each vote and shall separately record the position of members who choose to dissent, abstain or concur. Minutes of commission actions and other records which are not confidential under RSA 91-A:3, II or RSA 91-A:5 shall be public records and shall be available for inspection during the commission's ordinary office hours within 144 hours from the close of the meeting or vote in question unless the 72 hour availability requirement of RSA 91-A:3, III is applicable.

Bal 104.02 Custodian of Records. The secretary of state shall be the custodian of the commission's records and shall respond to requests to examine those records which are subject to public inspection.

Bal 104.03 Copies of Records. Persons desiring copies of commission records shall submit a request in writing which identifies as particularly as possible the information being sought and agrees to pay a copying fee of \$.25 per page. If records are requested which contain both public and confidential information, the commission shall redact the confidential information and provide the remaining information.

## PART Bal 105 MEETINGS, DELIBERATIONS AND DECISIONS

Bal 105.01 Meetings. The commission shall meet as required by statute, and at such additional time as are called for by the Secretary of State, chairman or by vote of the commission. 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 qualification as those of the commissioner whose place he is temporarily filling shall perform the duties of commissioner. In an emergency or with the consent of the consent of the parties involved 2 commissioners may act on behalf of the commission.

## PART Bal 106 APPOINTMENT OF COMMITTEES - RESERVED

## **CHAPTER Bal 200 PRACTICE AND PROCEDURE**

### PART Bal 201 INTRODUCTION AND DEFINITIONS

Bal 201.01 Purpose. The commission conducts various proceedings for the purpose of acquiring sufficient information to make fair and reasoned decisions on matters within its jurisdiction.

Bal 201.02 Failure to Comply with Rules.

(a) The secretary of state shall refuse to accept any document for filing which fails to comply with these Rules. The party attempting to file the document shall either bring the document into compliance and refile it or request the commission to waive its rules. The commission shall grant the request if it finds that the failure to comply with the rules is not substantive and that by granting the request no prejudice will result. Any document which clearly states a claim within the jurisdiction of the commission shall be accepted by the commission, regardless of form.

(b) Failure to comply with the rules of this chapter shall result in a conditional denial of the relief requested and if the violation is not or cannot be cured shall result in the issuing of an order adverse to the noncompliant person.

Bal 201.03 Waiver or Suspension of Procedural Rules. If requested, the commission shall grant a waiver of any requirement imposed by this chapter if the commission finds that good cause exists. In determining whether good cause exists the commission shall consider the magnitude of the waiver, the reason and necessity for the waiver and the prejudice to other parties.

#### PART Bal 202 REPRESENTATIVES

Bal 202.01 Representatives.

(a) A person appearing before the commission may be represented by an attorney or other representative.

(b) If the representative is not an attorney, the party and the proposed representative must sign a statement authorizing the representative to act on behalf of the party.

(c) The commission shall, after notice and opportunity for hearing, prohibit or restrict an individual from acting as a representative upon a finding that the individual has engaged in willful misconduct relating to representation before the commission which would be sanctioned by a court if committed by an attorney appearing before the court.

#### PART Bal 203 TIME PERIODS

Bal 203.01 Computation of Time. Any time period specified in this chapter shall begin with the day following the act, event, or default, and shall include the last day of the period, unless it is Saturday, Sunday, or state legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or state legal holiday. When the period prescribed and allowed is less than 7 days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded from the computation.

Bal 203.02 Change in Allowed Times. Except where a time period is fixed by statute, the commission shall, upon motion or upon its own initiative, enlarge or shorten the time provided for the filing of any document, or advance or postpone the time set for any oral hearing, prehearing conference, or other activity if the commission finds that good cause exists. In determining whether good cause exists the commission shall consider the magnitude of the waiver, the reason and the necessity for the waiver and the prejudice to other parties.

Bal 203.03 Limitations. A motion to change time shall not be filed within 3 business days of the event in question.

## PART Bal 204 FILING AND SERVICE OF DOCUMENTS

### Bal 204.01 Filing of Documents with the Board.

(a) A document shall be considered filed when it is actually received at the Secretary of State's Office and conforms to the requirements of state law and these rules. A document tendered for filing which is patently and facially in violation of the commission's rules shall be returned to the sender and not accepted for filing.

(b) All correspondence to the commission shall be addressed to the ballot law commission in Concord in care of the Secretary of State.

(c) All documents filed shall be filed with an original and 5 copies. Failure to submit copies shall not invalidate the filing, but the Secretary of State's Office shall require the submission of the required copies.

### Bal 204.02 Subscription and Veracity of Documents.

(a) All complaints, petitions, motions, and replies filed with the commission shall be signed by the proponent of the document or, if the party appears by a representative, by the representative. {insert Brad's comments }

(b) The signature on a document filed with the commission shall constitute a certification that:

(1) The signor has read the document;

(2) The signor is authorized to file it;

(3) To the best of the signor's knowledge, information, and belief, there are good grounds to support it and the factual allegations contained therein are truthful; and

(4) The document has not been filed for purposes of delay or harassment.

### Bal 204.03 Service of Documents.

(a) Complaints shall be filed with the commission with copies of the complaint being served on persons reasonably believed to have interests adverse thereto and on the moderator and clerk of the town, city or voting district involved, if any.

(b) Applications, petitions for rulemaking and petitions for declaratory rulings shall be filed with the commission without service upon other persons.

(c) Copies of all motions, replies, exhibits, memoranda, or other documents filed in an adjudicatory proceeding shall be served by the proponent upon all parties to the proceeding.

(d) Service of documents shall be made as follows:

(1) A copy of the document shall be deposited in the United States mails, first class postage prepaid, addressed to the last address given to the commission by the party being served, no later than the day the document is filed with the commission; or

(2) A copy of the document shall be delivered in hand on or before the date it is filed with the commission;

(3) Electronically to the known e-mail address of the other parties with confirmation of receipt,... [Brad's other comments....] or

(3) Such other means as the commission shall order.

(e) All notices, orders, decisions or other documents issued by the commission in the course of an adjudicatory proceeding shall be served by the commission upon all parties to the proceeding by either:

(1) Depositing a copy of the document, first class postage prepaid, in the United States mails, addressed to the last address given to the commission by the party being served;

(2) Delivering a copy of the document in hand to the party; or

(3) Sending the document to the party electronically.

(f) When a party has appeared by a representative, service shall be upon the representative unless otherwise ordered by the commission. Provided, however, that timely service which is actually received by a party shall be sufficient regardless of whether the party's representative was also served.

(g) All documents filed with the commission, and required to be served upon the parties to an adjudicatory proceeding, shall be accompanied by a certificate of service, signed by the person making service, attesting to the method and date of service, and the persons served.

## PART Bal 205 PLEADINGS, COMPLAINTS AND MOTIONS

### Bal 205.01 Pleadings.

(a) All petitions shall contain:

(1) The name and address of the petitioner;

(2) The name and address of the petitioner's representative, if any;

(3) A concise statement of the facts which warrant the relief requested from the commission;

(4) The description of the action which the petitioner wishes the commission to take; and

(5) A citation to any statutes, rules, orders, or other authority which entitles the petitioner to have the commission act as requested.

(b) All replies to complaints and petitions shall contain:

(1) The name and address of the respondent;

(2) The name and address of the representative of the respondent, if any;

(3) A statement admitting or denying each fact alleged in the petition;

(4) A statement admitting or denying the authority identified by the petitioner;

(5) A concise statement of any additional or different facts which warrant the commission acting in the manner requested by the respondent;

(6) A citation to any statutes, rules, orders or other authority, not identified in the petition, having a bearing upon the subject matter of the petition; and

(7) A description of the action which the respondent wishes the commission to take.

(c) Documents which can be understood to include all the components listed above ..... be accepted by the commission regardless of formalities.

(comments need to be deciphered]

(c) Replies shall be filed within 15 days from the date of the petition unless otherwise ordered by the commission because of statutory time constraints, emergency or agreement of the parties.

(d) Any fact contained in the petition which is not denied in the reply shall be deemed admitted by the respondent. A statement that the respondent lacks sufficient knowledge to admit or deny shall be treated as a denial. The petitioner shall be presumed to deny all allegations in the objection, and no response shall be required to the reply.

Bal 205.02 Motions and Objections Thereto.

(a) Unless presented during an oral session of a proceeding, all motions and objections shall be in writing.

(b) All motions shall state clearly and concisely:

(1) The purpose of the motion;

(2) The relief sought by the motion;

(3) The statutes, rules, orders, or other authority authorizing the relief sought by the motion; and

(4) The facts claimed to constitute grounds for the relief requested by the motion.

(c) Objections to motions shall state clearly and concisely:

(1) The reason for the objection;

(2) The action which the party filing the objection wishes the commission to take on the motion;

(3) The statutes, rules, orders, or other authority relief upon in defense of the motion; and

(4) Any facts which are additional to or different from the facts stated in the motion.

(d) An objection to a motion shall specifically admit or deny each fact contained in the motion. Failure to admit a fact contained in a motion shall constitute the denial of that fact for the purposes of the motion. In the event a party filing an objection to a motion lacks sufficient information to either admit or deny a fact contained in the motion, the party shall so state, specifically identifying such fact.

(e) Motions shall be decided upon the writings submitted without a formal hearing unless a hearing is expressly requested by one of the parties or the commission finds that oral arguments would assist the commission in reaching a decision due to the complexity of legal or factual issues. Repetitious motions shall not be submitted.

(f) Objections to motions shall be filed within 10 days after the filing of the motion. Failure to object to a motion within the time allowed shall constitute a waiver of objection to the motion.

## PART Bal 206 ADJUDICATIVE PROCEEDINGS

Bal 206.01 Applicability. This part shall govern all proceedings conducted by the commission except rulemaking and declaratory judgment proceedings.

Bal 206.02 Commencement.

(a) The commission shall commence an adjudicative proceeding by issuing a notice to the parties

(b) The notice commencing an adjudicative proceeding shall:

(1) Identify the parties to the proceeding as of the date of the order;

(2) Specify a deadline for the submission of petitions to intervene or statements by complainants that they intend to participate as a party;

(3) Specify the date, time, and location of the hearing; and

(5) Contain such other information as the circumstances of the case may warrant including, but not limited to orders consolidating or severing issues in the proceeding with other proceedings, and orders directing the production of documents.

Bal 206.03 Docketing, Service of Notice, Public Notice.

(a) The commission shall assign each adjudicatory proceeding a docket number, and serve the hearing notice upon all parties to the proceeding and the commission's legal counsel in the civil bureau, department of justice. The hearing notice shall be served upon the respondent, and the complainant, if any, by means of .

(b) Service of all subsequent orders, decisions and notices issued by the commission, including any amendments to the hearing notice, shall be served upon the parties or their representatives, including any intervenors, by .

(c) Orders, notices, and decisions of the commission, and motions, memoranda, exhibits, and other documents and data submitted to the commission in a docketed case shall be kept in a docket file and made available for public inspection in the commission's office except to the extent that confidentiality has been otherwise provided for by law.

Bal 206.04 Intervention. Petitions for intervention shall be considered in accordance with RSA 541-A:32.

Bal 206.05 Right to Counsel. Any party in an adjudicative proceeding may be represented by counsel, but an attorney appearing on behalf of a party shall first file a letter announcing the fact of representation at the earliest date practical. Parties shall retain counsel at their own expense and requests for appointment of counsel shall not be entertained.

Bal 206.06 Prehearing and Other Informal Conferences.

(a) At any time following the commencement of an adjudicative proceeding, the presiding officer shall direct all interested parties to attend one or more prehearing conferences to narrow issues and to aid in the disposition of the proceeding if the presiding officer determines that the hearing will involve complex legal or factual issues.

(b) There may be considered at a prehearing conference:

(1) Opportunities and procedures for settlement;

(2) Opportunities and procedures for simplification of the issues;

(3) Possible amendments to the pleadings;

(4) Possible admissions of fact and of documents to avoid unnecessary proof; and

(5) Possible limitations on the number of witnesses.

(6) Any other matters which aid in the disposition of the proceeding.

Bal 206.07 Subpoenas.

(a) Subpoenas for the attendance of witnesses at or the production of evidence at hearings shall be issued upon the order of the commission or by a justice of the peace in accordance with RSA 665:11. A party requesting the commission to issue a subpoena shall attach a copy of the proposed subpoena to its motion. The motion shall be granted if the commission determines that issuing the subpoena will assist it in making its decision. If the motion is granted, the requesting party shall be responsible for the service of the subpoena and payment of any applicable witness fee and mileage expenses.

(b) The person to whom the subpoena is directed may, within 2 days after service of the subpoena, or before the date specified in the subpoena for compliance therewith, whichever is later, file a motion to quash or modify the subpoena. If the commission denies the motion to quash or modify, in whole or in part, the person to whom the subpoena is directed shall comply with the subpoena, or any modification thereof, within the balance of time prescribed in the subpoena, not considering the elapsed time between the filing of the motion to quash or modify and the service of the ruling thereon. A motion to quash may be made at the hearing.

(c) A subpoena shall be served in the manner authorized for service of subpoenas in the New Hampshire superior court. The fact of service shall be written on the reverse of the original copy of the subpoena by the person making service. The original shall be immediately returned to the commission by the person making service.

Bal 206.08 Evidence.

(a) Proceedings shall not be conducted under the rules of evidence, but the evidentiary privileges recognized by the law of New Hampshire shall apply to proceedings under this chapter.

(b) All data which will reasonably assist the commission determine the facts shall be admissible, but data which is irrelevant or immaterial, unduly repetitious, or cumulative shall be excluded.

(c) If the commission officially notices a fact, it shall so state, and permit any party, upon timely request, the opportunity to show the contrary.

(d) Witnesses appearing before the commission shall testify under oath or affirmation.

(e) The commission shall cause a tape recording or stenographic record to be made of hearings . This record shall be transcribed upon the request a party who pays the estimated cost of transcription in advance.

Bal 206.09 Burden of Proof.

(a) The party asserting the affirmative of a proposition shall have the burden of proving the truth of that proposition by a preponderance of the evidence.

(b) Without limiting the generality of paragraph (a), above, all moving parties and all petitioners shall have the burden of persuading the commission that their motion or petition should be granted.

Bal 206.10 Methods of Proceeding. The method of proceeding under this part shall be determined as follows:

(a) Where facts material to the subject matter of the proceeding are in dispute, the proceeding shall consist of a trial-type evidentiary hearing with the subsequent submission of memoranda. if requested by the commission;

(b) Where there are no disputes of facts material to the subject matter of the proceeding, the proceeding shall be limited to the submission of memoranda or oral argument;

(c) A brief opening and closing statement shall be permitted at the discretion of the chair of the commission; and

(d) An order scheduling a supplemental hearing may be issued by the chair of the commission at any time prior to the issuance of a final order in the proceeding if the complexities of the issues so require.

Bal 206.11 Inquiry by Commissioners. All commissioners may question witnesses and make inquiry of witnesses, parties or counsel as they determine appropriate.

Bal 206.12 Proposed Findings of Fact and Conclusions of Law.

(a) Any party may submit proposed findings of fact and conclusions of law, provided that each proposed finding states a fact or conclusion of law that is essential to the issues to be decided by the commission.

(b) The commission may rule on each such proposed finding.

Bal 206.13 Ex Parte Communications. Once a notice of hearing has been issued in an adjudicatory proceeding, no party shall communicate with any participating commission member concerning the merits of the case except upon notice to all parties ; nor shall any party cause another person to make such communications or otherwise engage in conduct prohibited by RSA 541-A: 36.

PART Bal 207 PRESIDING OFFICERS - RESERVED

PART Bal 208 RECONSIDERATION AND STAY - RESERVED

PART Bal 209 CONSOLIDATION AND SEVERANCE - RESERVED

PART Bal 210 NONADJUDICATORY INVESTIGATIONS - RESERVED

PART Bal 211 RULEMAKING

Bal 211.01 How Adopted. A commission rule, or any amendment or repeal thereof, shall be adopted after notice and opportunity for a legislative-type hearing as provided by RSA 541-A:3 et seq. Rules may be proposed by the commission acting on its own motion or the commission may be requested to adopt, amend or repeal rules by motion.

Bal 211.02 Petition for Rulemaking. Any person may request the commission to commence a proceeding for the purpose of adopting, amending, or repealing a rule by filing a petition which contains:

(a) The text of the proposed rule or a statement of the particular results intended by the petitioner to flow from the implementation of the proposed rule;

(b) If the petitioner proposes to amend or repeal an existing rule, an identification of the particular rule sought to be amended or repealed; and

(c) Any data or argument the petitioner believes would be useful to the commission in deciding whether to commence a rulemaking proceeding.

Bal 211.03 Disposition of Petition. The commission shall grant a petition to adopt, amend or repeal a rule if the proposal is consistent with the election laws of the State of New Hampshire, advances the purposes thereof and, if implemented, would be required to be adopted as a rule. If the petition is denied, the commission shall state the reason therefor in the order. If the petition is granted, the commission shall undertake to commence a rulemaking proceeding in accordance with RSA 541-A:6.

Bal 211.04 Commencement of Rulemaking Proceeding. The commission shall commence a rulemaking proceeding by following the procedures set forth in RSA 541-A:3 et seq.

PART Bal 212 WAIVER OF SUBSTANTIVE RULES - RESERVED

PART Bal 213 DECLARATORY RULINGS

Bal 213.01 Petitions.

(a) Any person may request a declaratory ruling from the commission on matters within its jurisdiction by filing an original and 5 copies of a petition pursuant to Bal 205.01(a).

(b) Such a petition shall also set forth the following information:

(1) The exact ruling being requested;

(2) The statutory and factual basis for the ruling, including any supporting affidavits or memoranda of law;

(3) A statement as to how and why the issuance of a ruling on this subject would benefit the petitioner, other interested persons, and the public at large; and

(4) The identity, including mailing addresses when reasonably available, of specific persons whose interests would be affected by the issuance or non-issuance of the ruling in question.

Bal 213.02 Action on Petitions.

(a) If examination of a petition for declaratory ruling reveals that other persons would be substantially affected by the proposed ruling, the commission shall require service of the petition on such persons and advise them that they may file a reply pursuant to Bal 205.01(b).

(b) The petitioner and any persons served with notice of the petition shall provide such further information or participate in such evidentiary or other proceedings as the commission may direct after reviewing the petition and any replies received.

**CHAPTER Bal 500 ETHICAL STANDARDS AND DISCIPLINARY ACTIONS - RESERVED**

**CHAPTER Bal 600 RULES AND REGULATIONS FOR VOTING MACHINES AND DEVICES, ETC.**

PART Bal 601 SCOPE

Bal 601.01 Scope. The rules of this chapter govern the use of voting machines approved by the ballot law commission for elections conducted in the State of New Hampshire. Nothing in these rules shall be construed to grant authority to any town, ward, city, or other political jurisdiction to use voting machines or devices unless the voting machine or device has been approved by the ballot law commission for use in New Hampshire.

PART Bal 602 ELECTION OFFICIALS

Bal 602.01 Duties.

(a) The city or town clerk shall be the custodian of the voting machines or devices in said city or town. The clerk shall have custody of keys and/or one master key for clearing the machines. The clerk shall instruct all election officials prior to an election as to their duties relative to voting. The clerk shall have the voting machines or devices and all necessary fixtures and appliances at the proper polling places before the time fixed for opening the polls.

(b) The moderator of each ward or town shall designate the duties of the election officials of said ward or town insofar as the voting machines or devices are concerned.

(c) The selectmen of each town and the governing body of each city shall designate and define the duties of election officials with respect to preparation , programming, and sealing of voting machines or devices prior to each election.

Bal 602.02 Write-in Votes. Write-in votes shall be provided for in every election contest. Whenever more than one candidate is to be elected in any contest and the casting of a write-in vote for a candidate whose name is on the machine for that contest could enable a voter to vote

more than once for a candidate whose name is on the machine the write-in vote shall not be counted.

Bal 602.03 Number of Machines Required. There shall be furnished at least one machine for every 600 qualified voters or fraction thereof in excess of 100 whose names are upon the checklist in said ward or town at the closing of said list prior to the election.

#### PART Bal 603 PREPARATION OF VOTING MATERIALS

##### Bal 603.01 Ballots.

(a) All ballots provided for voting machines and devices shall be printed in black ink on clear, white material, of such size as will fit the ballot label frame, and in as plain, clear type as the space will reasonably permit. The face of the ballot and/or ballot label shall be completely covered with a protective covering of smooth, hard, transparent material so that it shall be impossible to alter the face of the ballot label without removing or breaking such covering.

(b) At the state general election the ballots and/or ballot labels shall have at the top of each column or on the left side of the row, whichever is applicable, the name of the political party by which the candidates in such column were nominated. Above the party designation shall be placed an emblem or device designating the political party assigned to that column. The ballot shall also be so designed that the voter may vote a straight ticket.

(c) For a state or presidential primary election the name of the political party shall appear but not the party emblem.

Bal 603.02 Ballot Diagrams - Sample Ballots. The secretary of state shall prior to the election prepare sample ballots. Such sample ballots shall be designed in the form of a diagram showing such part of the face of the voting machine or device as shall be in use at the election and containing suitable illustrated directions for the use of the machine. The secretary of state shall examine said sample ballots and if he approves the same he shall provide and furnish such ballot to the city or town clerk.

Bal 603.03 Absentee Ballots. Absentee ballots shall be prepared in the same manner as paper ballots.

#### PART Bal 604 PRE-ELECTION PROCEDURE

Bal 604.01 Exhibition Machines. The designated election officials shall specify suitable and adequate times and places where voting machines or devices containing sample ballots shall be exhibited for the purpose of giving instructions as to the use of voting machines or devices to all voters who apply for same. No voting machine or device which is to be used in an election shall be used for such instructions after having been prepared and sealed for the election. During public exhibition of any voting machine or device for instruction purposes, the counting mechanism shall be concealed.

##### Bal 604.02 Zeroing and Sealing Machines.

(a) The designated election officials responsible for the preparation, programming, and sealing of voting machine or devices shall seal said voting machines and devices after resetting each registering counter back to zero. The sealing and resetting shall be done in the presence of representatives of political parties defined under the terms of RSA 652:11 who wish to attend after having received written notice of the time, place and date that said voting machines or devices are to be sealed.

(b) When a voting machine or device has been prepared for election, it shall be locked against voting and sealed and the keys shall be retained by the designated election officials. After the voting machine has been transferred to the polling place, it shall be the duty of the designated election official to provide protection against molestation, tampering or injury to the machines or devices.

Bal 604.03 Arrangement of Polling Place. The arrangement of the polling place shall be the same as now provided by law. The exterior face of the machine shall at all times be in plain view of the election officials when not in use by the voters.

#### PART 605 ELECTION DAY MORNING PROCEDURE

Bal 605.01 Sealing Keys and Examining Machines.

(a) The keys to the voting machines shall be delivered to the moderator at least one hour before the time set for opening the polls. The keys shall be in a sealed envelope on which shall appear the number and location of the machine, the number of the seal, and the number registered on the protective counter or device as reported by the custodian.

(b) The envelope shall not be opened until at least one inspector of election from each of the political parties is present at the polling place and shall have examined the envelope to see that it has not been opened. Prior to opening the envelope, all election officials present shall examine the number on the seal on the machine and the number registered on the protective counter to see if they are the same as the corresponding numbers on the envelope.

(c) In the event that they are not the same, the machine shall not be opened until the custodian shall be re-examined the machine and certified that it is properly arranged.

(d) In the event that the numbers on the seal and protective counters are found to correspond with the numbers on the envelope, the election officials shall carefully examine every counter and see that it registers zero.

(e) In the event that any counter is found not to register zero, that machine shall be disqualified from use until the designated election officials have determined and certified that the machine in question has been fully tested and rendered operational and in compliance with all election statutes guaranteeing the accuracy of the machines.

(f) The machine or device shall remain locked against voting until the polls are formally opened and shall not thereafter be operated except by voters in voting.

Bal 605.02 Posting Election Materials.

(a) Prior to the opening of the polls, all the materials required to be posted in RSA 658 shall be posted as provided by law. The sample ballots to be posted shall be a facsimile of the voting machine layout which voters will face when voting at the voting machine.

(b) In addition to these materials, a copy of these rules shall be posted prominently outside the guardrail in each and every polling place in which voting machines are used.

(c) A list of the offices for which write-in voting shall be restricted pursuant to Bal 602.02 shall be posted outside the guardrail with the sample ballots and inside each voting booth along with the instructions to voters.

(d) The instructions required by (c) above shall clearly state as follows:

"TO PREVENT DOUBLE-VOTING FOR A CANDIDATE, WRITE-IN VOTES FOR CANDIDATES WHOSE NAMES APPEAR ON THE VOTING MACHINE FOR AN OFFICE WILL NOT BE COUNTED FOR THE FOLLOWING OFFICES:

(followed by a list of the offices for which the restriction applies)"

#### PART Bal 606 ELECTION DAY PROCEDURE

##### Bal 606.01 Conduct of Voting.

(a) Voters offering to vote shall be checked in at the incoming checklist and proceed to the voting booth as they would with paper ballots.

(b) In primary elections, a voter, after having been properly identified as to party affiliation by the election officials and after his name has been checked as then on the checklist for that party, shall be given an authority slip which shall be presented to the ward official who is attending the voting machine or device. The official shall then pull the primary control knob so that only the ballot for the proper party may be voted.

(c) The authority slip shall be of different colors for the different political parties. After voting, voters shall check out in the same manner as in paper ballot communities.

Bal 606.02 Inspection of Machines. The election officer attending the machine shall inspect the face of the machine after each voter has cast his vote to see that the ballots on the face of the machine are in proper places and that the machine has not been injured.

Bal 606.03 Assistance in Voting. The provisions of RSA 659:20 relative to assistance in voting to a voter who because of blindness or other physical disability is unable to mark his ballot shall apply to voting by voting machine.

Bal 606.04 Damaged Machines. In the event that any voting machine or device used in any voting district during the time the polls are open, become damaged or disabled so as to render it inoperative in whole or in part, the election officials shall forthwith if possible, substitute a perfect machine for the damaged one. At the close of the polls, the votes shown on the counters of each machine shall be added together in ascertaining the results of the election. In the event

that no other machine can be prepared forthwith for use at such election and the damaged one cannot be repaired in time, the provisions of RSA 658:35 shall apply.

#### Bal 606.05 Closing Polls and Counting Votes.

(a) As soon as the polls are closed, the moderator shall immediately lock and seal the voting machine or device against voting. The moderator shall sign a certificate stating that the moderator has done so, also stating the number of votes shown on the public counter, the number on the seal, and the number registered on the protective counter.

(b) The moderator shall then read and announce in audible tones the vote recorded for each candidate as well as the vote recorded on each question. The keys of the machine, if applicable, shall be enclosed in an envelope on which shall be written the number of the machine and the name of the voting district and date it has been used. The envelope shall be securely sealed, endorsed by the moderator and clerk, and delivered to the custody of the city or town clerk. The number on the seal and the number on the protective counter shall be written the envelope containing the keys.

(c) All keys for voting machines shall be kept securely locked. The voting machines or devices after an election shall be in the custody of the city or town clerk and shall be opened only by order of the secretary of state or of the ballot law commission, or of a court of competent jurisdiction, during the period when recounts may be requested and held.

(d) Absentee ballots cast shall be counted and the totals for each candidate shall be added to the number of votes for the same candidates as taken from the count on the voting machines. After the absentee ballots have been counted, the moderator shall place the ballots together with all envelopes, opened or unopened, as provided by RSA 659:50-659:55 in suitable containers as provided by RSA 659:95.

#### PART Bal 607 POST ELECTION PROCEDURE

Bal 607.01 Recount. When a recount is requested which involves the votes in a city or town using voting machines, the secretary of state shall personally or by his deputy inspect the machines and check the counts. The opposing candidates for the nomination in question shall have the right to be present when such inspection of the voting machines is held and shall be notified of such right at the time they are notified as to the inspection and recount.

Bal 607.02 Clearing Machines. After the period for requesting and conducting recounts is passed, the town or city clerk may clear the voting machines. In the event that another election is to take place within the period the machines are impounded for recounts, the town or city clerk may, upon notice to the secretary of state, clear the machine within 10 days prior to said next election.

#### PART Bal 608 APPROVAL OF VOTING DEVICE

Bal 608.01 Approval. Any person desiring to have the ballot law commission approve the use of a voting machine or other device not previously approved may submit a written application for approval to the commission. The request shall include the name of the manufacturer, model number and other information to identify the device. The commission shall approve the request following a public hearing if the commission finds that adequate safeguards have been provided

to ensure the integrity of election results and the machine or device complies with these rules and the election laws of the State of New Hampshire.