

**STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION**

Decision BLC 2023-3

Certification of Electronic Ballot-Counting Devices for Use in New Hampshire Elections

BACKGROUND

The Ballot Law Commission is vested with the authority to examine and approve devices for the electronic counting of ballots. N.H. REV. STAT. § 656:41. At present, only the AccuVote device is certified by the Ballot Law Commission for the electronic counting of ballots in New Hampshire elections. Between November 2022 and August 2023, electronic ballot-counting device vendors engaged in the certification process, including pilots in state and local elections with post-election audits, responses to inquiries about the vendors' company and its proposed electronic ballot-counting device, and a demonstration of the proposed electronic ballot-counting devices before State Representatives, State Senators, local election officials, and interested voters.

On August 31, 2023, the Ballot Law Commission narrowed the field of electronic ballot-counting devices under consideration, voting to move forward with its consideration of only the electronic ballot-counting devices proposed by VotingWorks and Dominion/LHS.

DECISION

The Ballot Law Commission, based on the background above, voted on September 15, 2023 to certify the VotingWorks electronic ballot-counting device and the Dominion ImageCast Precinct electronic ballot-counting device for use in New Hampshire elections. Certification of the VotingWorks and Dominion ImageCast Precinct electronic ballot-counting device is effective March 1, 2024.

Certification of the VotingWorks and the Dominion ImageCast Precinct electronic ballot-counting device is subject to the following conditions:

1. Electronic ballot-counting devices certified for use in New Hampshire elections must receive U.S. Election Assistance Commission ("EAC") certification under Voluntary Voting System Guidelines ("VVSG") 2.0 standards by December 31, 2026.
 - a. An extension, as requested by the electronic ballot-counting device's vendor, to receive EAC certification under VVSG 2.0 standards may be granted at the Ballot Law Commission's sole discretion.
 - b. Failure to receive EAC certification under VVSG 2.0 standards by December 31, 2026, without a granted extension, shall cause a review of the noncompliant

electronic ballot-counting device's certification status for use in New Hampshire elections.

2. The vendor from whom a certified electronic ballot-counting device is purchased must upgrade its electronic ballot-counting device to be compliant with VVSG 2.0 standards at the expense of the vendor from whom a certified electronic ballot-counting device was purchased within six months of the date the device is EAC certified to VVSG 2.0 standards, or replace the device at its expense with a device which is compliant with VVSG 2.0 standards.

3. Electronic ballot-counting devices certified for use in New Hampshire must comply with the Ballot Law Commission's December 14, 2021 standards for approval of additional ballot-counting devices, as stated below:

“Standards for selection of ballot counting devices in addition to that one already approved for use in New Hampshire, which is not subject to all such standards, include but may not be limited to:

- i. Individual paper ballot for each voter.
- ii. Ability to read New Hampshire ballots as prepared by the Secretary of State in accordance with state law.
- iii. Verifiable chain of custody for each ballot once introduced into the machine.
- iv. Preservation and security of paper ballot for hand recounts.
- v. No networking capacity, including but not limited to the ability to being connected to the internet or other networks or vote counting devices, or utilizing a technology which can be compromised. (NOTE: this standard to be reviewed by technical specialists to determine if there is better technical wording).
- vi. Protection of voter privacy.
- vii. Verifiable security of each machine before, during and after voting, including security locks, key or seals.
- viii. Redundancy capacity for recording votes (dual records of votes in addition to retention of original paper ballots).
- ix. Adequate battery back-up capability.
- x. Availability of service and parts.
- xi. Independent verification of accuracy by appropriate laboratory acceptable to the Ballot Law Commission.
- xii. Compliance with all requirements for devices found in NHRSA 656:42 or elsewhere in state law.
- xiii. Capacity to physically separate or otherwise identify ballots with write-in votes.
- xiv. Adequate physical capacity to store large numbers of ballots.”

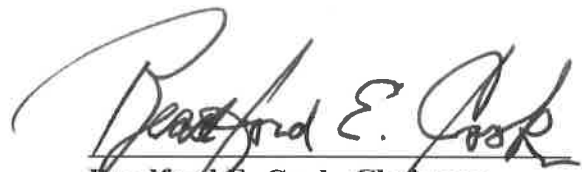
4. Electronic ballot-counting devices certified for use in New Hampshire shall submit for testing to an EAC accredited Voting System Test Laboratory (“VSTL”) prior to use in a New Hampshire election. The vendor from whom a certified electronic ballot-counting device is purchased shall present a testing plan to, and get approval from, the Ballot Law Commission and the Secretary of State for testing up to VVSG 2.0 standards in areas

identified by the Secretary of State. Any future changes have to come before the Ballot Law Commission for approval in accordance with N.H. REV. STAT. § 656:41.

5. The vendor from whom a certified electronic ballot-counting device is purchased shall present its plan for election day support, including personnel response time, minimum staffing in New Hampshire on election day, spare device parts, and spare devices, shall present a plan to, and get approval from, the Secretary of State. The aforementioned plan shall be presented and approved prior to the device's first use in an election in New Hampshire.
6. Electronic ballot-counting devices certified for use in New Hampshire elections must comply with N.H. REV. STAT. § 656:43: "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 who such device is purchase 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."
7. The vendor from whom a certified electronic ballot-counting device is purchased shall maintain a surety bond for each purchaser of its electronic ballot-counting device in the total dollar amount of the purchased electronic ballot-counting device(s). The vendor shall maintain such surety bond until it receives full EAC certification under VVSG 2.0 standards. All such surety bonds shall be filed with the Secretary of State. N.H. REV. STAT. § 656:43.
8. The Secretary of State, at his own discretion, shall conduct post-election audits of the electronic tabulation of ballots by the VotingWorks and Dominion ImageCast Precinct electronic ballot-counting device after each state primary, general election, and presidential primary.
9. Certifications are subject to receipt of sufficient financial information.

This order shall not be construed to decertify any current electronic ballot-counting devices certified for use in New Hampshire, which will be done by vote of the Ballot Law Commission for the decertification. Failure to comply with any of the above conditions shall cause a review of the noncompliant electronic ballot-counting device's certification status for use in New Hampshire elections.

So ordered.



Bradford E. Cook, Chairman

David B. Campbell

Robert LeTourneau

Michael Eaton

Kathleen Sullivan