

AGENDA ITEM #: 23-116 & 23-117
COUNCIL MTG OF: October 17, 2023
FROM: Dave Caron, Town Administrator
OFFERED BY: Elections
PREPARED BY: Tina Guilford, Town Clerk
SUBJECT: Selection of and Purchase of New Electronic Ballot Counting Devices

INTRODUCTION

Pursuant to RSA 656:40, approve the use of Dominion ImageCast Precinct electronic ballot-counting devices for elections in Derry and expend \$50,400 from the Derry Recovery Expendable Trust (ARPA Funds) to purchase 8 devices.

BACKGROUND

The Ballot Law Commission is vested with the authority to examine and approve the devices for the electronic counting of ballots. RSA 656:41. The Ballot Law Commission 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. The certification of the two ballot counting devices 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 ("VWSG") 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 VWSG 2.0 standards may be granted at the Ballot Law Commission's sole discretion.
 - b. Failure to receive EAC certification under VWSG 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 VWSG 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 VWSG 2.0 standards or replace the device at its expense with a device which is compliant with VWSG 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 VVS G 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. Rpv. Srer. g 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. Rnv. Srer. § 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. Rpv. Srrr. § 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.

DISCUSSION

The current Accuvote Machines that the Town of Derry uses have been in service since 2002. While they are currently approved for use, they are not as reliable as they used to be. Over the last few elections, we have at times had to not use a particular machine because it has failed the test. As we gear up to the 2024 presidential election in November, we will need all of Derry's 8 machines to be running in perfect order. LHS has been a very responsive partner over the years. They are located in Salem, NH and they have always been available any time we have needed any assistance. We also like the convenience of being able to hand deliver and pick up our cards for testing as this keeps a chain of custody on the cards. With 20,000 voters possible on any given election day, we must have reliable machinery to assist us in the counting of the votes. In 2022, it took 34 volunteers 4 hours to count 1500 ballots at a cost of \$1,920.00.

FISCAL IMPACT

Authorization is being sought to expend \$50,400 in ARPA funds to purchase eight devices. The Council is designated as Agents to Expend for the Derry Recovery Expendable Trust and is authorized to utilize a portion of these funds for this purpose.

RECOMMENDED ACTION BY COUNCIL

Please see Resolution #2023-075 to authorize use of the Dominion ImageCast Precinct Electronic Ballot Counting Devices.

Should the Council adopt Resolution #2023-075, please see Resolution #2023-076 which would transfer funds from the Derry Recovery Expendable Trust to purchase eight replacement voting machines.

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RESOLUTION

Number 2023-076

Transfer Funds from the Derry Recovery Expendable Trust Fund

WHEREAS, Section 9.7 of the Town Charter empowers the Town Council to transfer any unencumbered appropriation balance; and

WHEREAS, the Town Council pursuant to Resolution #2021-025 created an Expendable Trust for the Derry Recovery Plan to receive funds from the American Rescue Plan Act and disburse as necessary; and

WHEREAS, the Town Council pursuant to Resolution #2023-075 has authorized the use of Dominion ImageCast Precinct Ballot-Counting Devices for elections in Derry; and

WHEREAS, funds are available in the Derry Recovery Expendable Trust Fund (ARPA) to purchase counting devices necessary to conduct elections in Derry.

NOW, THEREFORE, BE IT RESOLVED IN COUNCIL that the Town Administrator is authorized to transfer the sum of Fifty Thousand Four Hundred Dollars (\$50,400) from the Derry Recovery Expendable Trust Fund to purchase eight Dominion ImageCast Precinct Ballot Counting Devices.

This Resolution shall take effect immediately upon its passage.

Adopted: October 17, 2023

Attest:

X _____
Charles Foote, Council Chair
Date: _____

X _____
Cristina Guilford, Town Clerk
Date: _____