

Memorandum

TO: Town and City Clerks

FROM: Kathy DeWolfe

RE: 2003 Legislative Changes affecting Elections
Act 59 (House Bill 460) Summary

DATE: July 21, 2003

In order to implement the requirements of the federal election reform law, HAVA 2002, and to make some housekeeping changes to improve the administration of elections, the Vermont general assembly has passed and the Governor has signed into law, Act 59, effective July 1, 2003 (except for Sections 4 & 7 dealing with the statewide checklist that will become effective January 1, 2006).

We have enclosed a copy of this Act for your review. This memo will summarize the provisions in the Act and also the provisions of Act 4, effective July 1, 2003. We will be revising the Elections Perspective Guide and also updating the Vermont Election Laws for your easy reference. We expect to be able to send these to you this fall.

I. Act 4: An Act relating to Assistant Town Clerks.

Effective July 1, 2003, an assistant town clerk may serve as an assistant election officer, regardless of his or her residence.

This change will allow assistant town clerks that live in another town to work at elections in the town where he or she is employed.

II. Act 59: An Act relating to implementing the federal Help America Vote Act.

- A. 1 V.S.A. §317(c) (Public Records Law) has been amended to add the following to the list of documents that are exempt from public inspection: "records of a registered voter's month and day of birth, motor vehicle operator's license number, the last four digits of the applicant's social security number, and street address if different from the applicant's mailing address contained in an application to the statewide voter checklist or the statewide voter checklist established under 17 V.S.A. §2154."

Legislators determined that this information should remain private and should not be accessible to the public.

- B. 17 V.S.A. §2144 has been amended to:
Change the deadline for applications to the checklist to the **second MONDAY before an election** instead of the second Saturday before an election.

Legislators on the local government committee initiated this change. It should mean less extra hours for most clerks.

Remember that when a filing deadline falls on a Sunday or holiday, the deadline is moved to the next business day. 17 V.S.A. §2103 (13). So for the September 2004 Primary Election when the 2nd Monday before the election falls on Labor Day, the application deadline would be the next day, or the Tuesday before the election.

- C. 17 V.S.A. §2144b is amended to:

1. **Allow the Town Clerk to review and approve applications to the voter checklist without a meeting of the Board of Civil Authority (BCA)** and to add the names to the checklist on an expedited basis (as soon as reasonably possible).
2. Require the Town Clerk to notify an applicant if any information is missing and allow the applicant to supply the missing information up to the day of the election.
3. If the Town Clerk cannot determine that the applicant meets the requirements to be added to the checklist, the clerk must forward the application to the BCA. The BCA must meet in a timely manner to determine whether the applicant meets the qualification requirements to be added to the checklist (a quorum of 3 members is sufficient for adding names to the checklist.)
4. At least 5 days prior to each election, the town clerk shall forward to the BCA a list of additions to the checklist.

- D. 17 V.S.A. §2145 (Application Forms) is amended to:
(This section becomes effective January 1, 2006.)

1. Require the applicant to affirmatively check a Yes (box) to each qualification to vote (U.S. citizen, over 18, resident of Vermont town, taken voter's oath);
2. Revises the list of information that the Secretary of State must request on the application to include either a driver's license, or if none, the last 4 digits of the SSN, or if none, to be assigned a unique identifier by the Secretary of State.

Please continue to accept the current forms until we notify you that new forms have been printed, distributed, and are required.

- E. 17 V.S.A. §2147 (Alteration of Checklist) is amended to:
1. In section 2147(a)(4), BCA must add names of persons who complete a sworn affidavit as prepared and distributed by the Secretary of State (see Elections Perspectives 2000, Appendix G) to the checklist at the polling place. Voters cannot be forced to leave the polling place to go to the clerk's office in order to be added to the checklist or in order to complete a provisional ballot (described later in this memo.)
 2. In section 2147(a)(6), BCA must add names of persons to the checklist who previously submitted an incomplete application and now provide the missing information.
- F. 17 V.S.A. §2150 (Removing names from the checklist) is amended to:
1. Allow Town Clerk to remove a name from the checklist upon public notice of his or her death;
 2. Allow Town Clerk to remove a name from the checklist upon official notice from the DMV that a voter has authorized his or her address to be changed for voting purposes.
 3. The language was cleaned up to make it clear that you can use any form letter or postcard to allow voter to respond to a purge letter, and now requires the voter to swear under penalty of perjury that voter still has a current place of residence in the town, and give that location, if he or she wants to remain on the checklist.

The Town Clerk can now remove persons who have died from the checklist as soon as there has been a public notice of the death. You no longer have to wait for an official death certificate (which sometimes never arrive if a person dies out of state).

We have also researched provisions in the NVRA of 1993, better known as "motor voter" law, and have amended the Vermont statute so that the Town Clerk can remove the name of a person who submits a change of address to the DMV. When you receive the notification of change of address from our Office of the Secretary of State that notice is based upon the voter's written notification to DMV of an address change. **If the change of address you receive is to a location outside of your city or town, you can remove the voter from your checklist immediately--you do not have to send a purge letter and wait for a response.** Obviously, make a note in your files or in your database that the voter was removed due to DMV change of address. If the voter subsequently appears at your polling place(s) and is willing to swear that he or she never changed addresses or left your town or city, you can add them to the checklist under 17 V.S.A. §2150(d)(6).

- G. 17 V.S.A. §2154 (Statewide Voter Checklist) is added to:
(This is Sec. 7 and becomes effective on January 1, 2006.)
1. Authorize the Secretary of State to create a computerized statewide voter checklist that shall serve as the official checklist for all polling places for all elections after January 1, 2006.

2. We will be sending out more information to all Town Clerks as we develop the database and near the time for implementation. We expect to have the basic development of the system done by October and to begin "testing" the system with 10 volunteer Town and City Clerks during November and December 2003.

It is our intention to incorporate ideas we have received from Town Clerks in our survey and our working groups and advisory committees so that each clerk should be able to data enter and track all of the things that you are now doing on your checklist.

If all goes well, we will then begin adding towns to the checklist throughout the 2004. If at all possible, we would like to have most towns using the new system in time for the 2004 elections.

3. Persons who want to receive a copy of the statewide checklist will need to complete and submit an affidavit to the Office of the Secretary of State and swear that they will not use the list for commercial purposes.
 4. Election officials can only use the statewide checklist information that is exempt from public inspection for election purposes.
- H. 17 V.S.A. §2321 (Representative District Committee), §2322 (Senatorial District Committee), and §2323 (Probate District Committee) are amended to set a five day notice requirement for meetings of representative, senatorial, and probate party committees (so it is now the same as for other political party committee meetings).
 - I. 17 V.S.A. §2356 (Time for Filing Petitions) is amended so that a person cannot file a petition to run in a primary election sooner than the first Monday in June for the following September Primary Election.
 - J. 17 V.S.A. §2386 (Time for Filing Statements) is amended to allow a party seven days to nominate a candidate when there has been a death or withdrawal after the day of the Primary, but no later than 40 days before the General Election (to allow time for ballot printing & distribution).
 - K. 17 V.S.A. §2412 (Withdrawal of Candidacy) is amended to require a candidate to submit a notice of withdrawal not later than the 3rd day following the primary AND to remove the requirement that the Secretary of State or the Town Clerk must "publicly announce a printing deadline" for ballots.
 - L. 17 V.S.A. §2457(a) (Workshops and Information for Election Officials) is amended from "run elections in a proper and legal manner" to "run elections in conformance with state and federal law."
 - M. 17 V.S.A. §2451 (Board of Civil Authority) is amended to authorize the BCA to "issue guidance for elections officials that assists officials in conducting elections with the political subdivision. Guidance issued by the board shall not conflict with federal or state elections laws."

- N. 17 V.S.A. §2454 (Assistant Election Officers) is amended to:
1. Allow an assistant town clerk to serve as an assistant elections officer regardless of his or her residence; and
 2. Allow the BCA to appoint 16 or 17 year old residents of a voting district to serve as assistant elections officers under the direct supervision of adult elections officials.
- O. 17 V.S.A. §2458 (Complaint Procedure) is ADDED to authorize the Secretary of State to adopt rules to establish a uniform and nondiscriminatory complaint procedure to be used by any person who believes that a violation of Title 17 or the federal election laws has occurred, is occurring or is about to occur. The complaint must be a written statement sworn to under penalty of perjury and notarized. The rules must provide for an informal proceeding unless a formal hearing is requested. Any decision of the secretary may be appealed to superior court.
- P. 17 V.S.A. §2474 (Choice of Party) is amended to require that a person nominated by more than one party must give written notification of his choice of parties (and order of listing on the ballot) NOT LATER THAN the 2nd Friday following the Primary.
- Q. 17 V.S.A. §2491 (Political Subdivision May Use Voting Machines) is amended to eliminate the reference to "mechanical" machines as they are no longer used in Vermont.
- R. 17 V.S.A. §2492 (Legislative Branch to Obtain Voting Machines) is amended to require a town or city to vote at least 6 months prior to the next primary or general election to change to use a voting machine that has been approved by the Secretary of State. This gives sufficient time to change the bids for ballots.
- S. 17 V.S.A. §2493 (Rules for Use of Voting Machines) is amended to:
1. Authorize the Secretary of State to adopt Rules governing the use and selection of voting machines.
 2. These Rules shall include the requirements that:
 - a. All municipalities using voting machines shall use a uniform voting machine approved by the Secretary of State. In discussions with the HAVA working groups, Advisory Committee, and Town Clerks around the state, it is our sense that the Accuvote optic scanning machine is the best overall machine and the one preferred by Town Clerks and election officials. We have money in the state FY 2004 elections budget to replace voting machines in some of the towns now using the Optech III P machines and we expect to either request a budget adjustment, or reallocate some funds from other potential projects in order to replace all the Optech III P machines no later than January 2004. We expect to request funds in the FY 2005 budget year that starts in July of 2004 to replace the Optech Eagle machines and the ES&S machines so that by January 2005, all of the Towns using voting machines will be using Accuvote machines.
 - b. Voting machines must be set to reject ballots that contain Overvotes to allow voters to correct their mistake. HAVA 2002 requires that all states adopt rules to set machines to reject ballots.
 - c. Voting machines must be set not to reject undervotes.

- T. 17 V.S.A. §2494 (Construction with Other Laws) is amended to allow the BCA of a town using voting machines to open at 5:00 am for tabulating absentee ballots.
- U. 17 V.S.A. §2521 (Warnings and Notices) is amended to add some instructions that must be incorporated into the Warnings and Notices for Primary and General Elections that are sent from the Office of the Secretary of State for posting in Towns.
- V. 17 V.S.A. §2522 (Sample Ballots) is amended to require posting of the sample primary and general election ballots at least 20 days prior to the election, to eliminate the mention of "voter information cards" and to eliminate the obsolete reference to posting sample ballots for mechanical voting machines.
- W. 17 V.S.A. §2542 (Signing Certificate) is amended to include swear "or affirm" in the certificates on the voted early voter or absentee ballot envelopes.
- X. 17 V.S.A. §2546 (Deposit of Early Voter Absentee Ballots in the Ballot Box) is amended to authorize the election official at the entrance checklist to verify that if the voter is a 1st time voter who registered by mail, the voter has submitted identification to the election officials. If I.D. has been submitted, the ballot will be deposited in the ballot box or voting machine. If I.D. has not been submitted, the ballot must be placed in a provisional ballot envelope (see discussion of provisional ballots later in this memo.)
- Y. Subchapter 6A. (Provisional Voting and Voter Affirmation), 17 V.S.A. §2555 Provisional Ballot Envelopes, §2556 Provisional Voting, and §2557 Town Clerk Approval of Provisional Voter Attestation is added to comply with the requirements of the federal HAVA 2002.

This subchapter will be rarely used in Vermont. In Vermont, the Town Clerk or BCA members present at the polling place can offer the Sworn Affidavit Form to any person who comes to the polling place who is not found on the checklist but who is willing to swear that he or she completed an application to the checklist in your town and that he or she meets all the qualifications. If the affidavit is completed and accepted, the person is added to the checklist and votes a regular ballot.

Other states do not have this type of system to allow persons to be added to the checklist at the polling place so the provisional ballot system is used and now required in all states.

In Vermont, an election official will only need to offer a provisional ballot if your town does not use the sworn affidavit to add names, OR if the Town Clerk or BCA members present do not believe that the person really resides in Town or really submitted an application, i.e., the person cannot swear truthfully to the affidavit.

In most Towns, the Town Clerk and BCA will find that it makes more sense to do the research while the voter is there to see if he or she was removed in error and should be added back to the checklist, was not added by mistake, or to offer and accept the sworn affidavit of a person who believes he submitted a complete application in a timely manner, then add the voter to the checklist and have them vote a regular ballot.

Provisional ballots and provisional ballot envelopes will be provided to all town clerks for the 2004 elections. The Provisional ballots will only contain candidates for federal offices. The provisional ballot envelopes will contain an affidavit for the provisional voter to complete and a section to be completed by the Town Clerk after the election. After the voter has voted the ballot, placed it in the envelope and completed the affidavit, the voter shall place the envelope in a ballot box marked for "Provisional Ballots."

After the polls are closed, the provisional ballot box will be opened and if any provisional ballots have been voted in your town, the Town Clerk is given up to 2 days to investigate if the applicant meets all of the requirements for eligibility to vote and determine whether the voter had submitted a timely voter registration form (by calling DMV for example.). The Town Clerk will then mark the provisional ballot envelope as "approved" or "rejected," complete the attestation and send it to the Office of Secretary of State with your Official Return of Votes. Envelopes marked "approved" will be counted and added to the statewide count for federal offices.

With the opportunity to use the sworn affidavit in Vermont, we expect to have very few provisional ballots used. However, we will provide more details and respond to all questions during our election training workshops.

- Z. 17 V.S.A.§2561 (Hours of voting) is amended to allow a BCA to open the polls to all voters at any time from 5 a.m. until 10 a.m.
- AA. 17 V.S.A.§2563 (Admitting Voter) is amended to require the election officials at the entrance checklist to request I.D. from any voter who has registered to vote for the first time by mail and who has not yet provided the required I.D. (valid photo identification; copy of current utility bill; copy of a current bank statement, or copy of other government document that shows current name and address of the voter. If the first time voter who registered by mail cannot produce the required I.D., he or she shall be offered a provisional ballot. If the I.D. is presented, the election official shall note this on the entrance checklist, and the voter can proceed to vote.
- BB. 17 V.S.A.§2567 (Registering Votes on Voting Machines) is amended to remove the obsolete 5 minute limitation on "occupying a voting machine" and to add the HAVA 2002 requirement that every polling place in Vermont must possess at least one voting system approved by the Secretary of State equipped for individuals with disabilities, including accessibility for the blind and visually impaired, to vote independently and privately.

Our office is working with representatives of the disability communities to try to find the least expensive and most effective way to meet this requirement. The voting machines that we have seen demonstrated as meeting this requirement are very expensive to purchase, maintain, program, create audio for, etc. We are looking at other possible creative ways to meet this requirement that will satisfy the real intent of the law to allow voters with disabilities to vote independently and privately.

We are also asking Towns to eliminate unnecessary polling places. A number of BCA's have found that voters actually like to have all voters in town vote at the same polling place even if there are different districts in the town. Please discuss this

possibility with your BCA and please notify our office if you are able to eliminate polling places.

We understand that some Cities and Towns will need to have more than one polling place because the number of voters on the checklist is so high that parking cannot be provided at one location. However, in towns with less than 2,000 voters on the checklist, the Town should be able to have only one polling place for all voters.

- CC. 17 V.S.A. §2569 (Assistance to Voters) is amended to allow a voter to request assistance at a polling place without stating a reason and to have assistance from either the person of the voters choice or two elections officials of different party affiliations.
- DD. 17 V.S.A. §2573 (No Counting Before Polls Close) is amended to clarify that in towns using paper ballots, the ballot boxes shall not be opened before closing of the polls, and in machine towns the machine counts shall not be viewed or printed before closing the polls.
- EE. 17 V.S.A. §2582 (Presiding Officer to Direct Count; Transporting Ballots or checklist) is amended to:
1. Authorize the Secretary of State to adopt rules for counting ballots. (Formally adopt the "rules" in Elections Perspectives 2002 at pages 27 to 30.)
 2. Allow a presiding officer to request the Secretary of State for a determination that the ballots should be counted someplace other than the polling place, or that the checklist should be moved by tow elections officials of different parties to make a photocopy.
- FF. 17 V.S.A. §2583(b) (Official Checklist to be Tallied) is amended to replace "alternate materials" with "read-out sheets or other machine materials" to be placed in the ballot bags.
- GG. 17 V.S.A. §2587 (Rules for Counting Ballots) is amended to:
1. Require the Secretary of State to adopt by rule guidance on determining whether a ballot is spoiled (Formally adopt the "rules" in Elections Perspectives 2002 at pages 27 to 30).
 2. Direct vote counters to combine the counts for names of candidates that are clearly the same person even though a nickname or only last name is used and direct that names of fictitious person shall not be listed on the tally sheet or summary sheet.
- HH. 17 V.S.A. §2588 (Filing Returns) is amended to require that clerks deliver the Official Return of Votes to the Secretary of State, Representative Clerk and Senatorial Clerk within 48 hours of the close of the polls in a manner prescribed by the Secretary of State and to clarify that the clerk's copy of the Official Return of Vote is a public document that can be requested.
- II. 17 V.S.A. §2592 (Canvassing Committees; Canvass of Votes in General or Special Elections) is amended in subsection (k) to add the attorney general to the list of statewide officers.

JJ. 17 V.S.A. §2602l (Recounts Using Voting Machines) was amended to clarify that the ballots must be counted by hand as outlined in sections 2602a through 2602k in all towns including towns that use voting machines on election day.

KK. 17 V.S.A. §2680 (Australian Ballot System; General) is amended so that when budgets have failed and the legislative body wants to use the provisions of this section to have a shortened warning period for the budget vote of 7 days, the informational hearing must only be warned for 5 days.

LL. 17 V.S.A. §2704 (Ballots) is amended so that in the Presidential Primary the election officials at the entrance checklist must mark the checklist with a letter code designated by the Secretary of State to indicate the voter's party choice.

The Secretary of State designates "D" as the code to be used for voters who request a Democratic Presidential Primary Ballot and the code "R" for voters who request a Republican Presidential Primary Ballot.

MM.30 V.S.A. §7059(e) is amended to provide that no person acting on behalf of the state or any political subdivision (City, Town, School District, etc) can require a person to disclose his or her enhanced 911 address provided that the person gives an alternative mailing address or in the case of a voting application, a physical description of where the principal dwelling place is located within the town or city.

End of Memo