

Overview of S.107 (elections corrections) As Passed by Senate

General Summary

[S.107 As Passed by Senate](#) would make miscellaneous amendments to election law. Aside from technical corrections, the bill covers these issues:

- Using the gender neutral term “voter” instead of “freemen and freewomen”;
- Using DMV data for voter checklist maintenance purposes;
- Major political party organization;
- Candidate primary petitions and statements of nomination;
- Deciding primary recount ties;
- The electronic delivery of early voter absentee ballots for voters who are ill, injured, or have a disability;
- Using a vote tabulator during early voting in the town clerk’s office;
- Standards for defective ballots;
- Retention time for unused ballots;
- The date of a special election to fill a congressional vacancy; and
- Campaign finance reporting dates.

Section-by-Section Summary

* * * Ratification of Articles of Amendment to the Vermont Constitution * * *

Sec. 1 amends the chapter regarding **voter ratification of proposals to amend the Vermont Constitution.**

- Throughout this section and in other sections, the bill substitutes the gender neutral term “voters” for the phrase “freemen and freewomen” that is still used in some places within Title 17.

- This is the same change the Vermont Supreme Court Justices made in 1994 when they performed their [gender inclusive language revision to the Vermont Constitution](#).
- Sec. 1 also cleans up language throughout this chapter. For example:
 - § 1843 refers to the time that polls – not ballot boxes – are to be open, as provided in [17 V.S.A. § 2561](#).
 - § 1845 eliminates unnecessary language to more concisely provide that election provisions relating to the ratification vote as the same as those in general elections. (The ratification vote is held at the general election via [§ 1842 of this chapter](#).)
 - **Revise section heading to be “conduct of election” or something similar, since reference to booths and clerks is eliminated in the section text.**
 - § 1849 eliminates reference to “magistrates,” since they now only exist within the Family Division of the Superior Court via [4 V.S.A. § 461](#) and can be included with other “officers . . . of the State” already referenced in the section.
 - § 1850 specifies when the Secretary of State would need to provide a copy of this ratification chapter to town clerks.

* * * Reapportionment * * *

Secs. 2-4 make technical corrections to the chapter on **reapportionment**.

- Sec. 2 eliminates language referring to Senators as county officers.
- Sec. 3 clarifies that the Senate is also subject to reapportionment.
 - The same clarification was made in [S.11](#).
- Sec. 4 updates language with the terms “voters” instead of “freemen and freewomen” and “chapter” instead of “title.”

* * * Voter Registration * * *

Secs. 5-6 relate to **voter registration**.

- Sec. 5 explicitly provides that the DMV is to provide the Secretary of State's Office with the DMV's driver's license, driver privilege card, and non-driver ID customer data so that the Secretary's Office can use this data for both voter registration and voter checklist maintenance activities.
 - The Secretary's Office uses this data to keep voter checklists up-to-date, and also uses this data to alert another state when a voter has moved from that state and has registered to vote in Vermont, if a Vermont town clerk has not already done so.
- Sec. 6 breaks up a very long subsection into further subdivisions for ease of reading and makes other stylistic changes.

* * * Political Parties * * *

Sec. 7 updates the chapter on **political parties**. Many of these proposed amendments loosen restrictions on the procedure for major political party organization. Aside from stylistic changes:

- § 2303 increases the town population size that requires special notice for town committee meetings from 3,000 to 5,000.
 - In (b)(2)(B), this special notice could be provided in an online forum instead of in an online news media site.
- § 2306 specifically cross-references the relevant sections within this chapter, rather than referring to "above" provisions.
- § 2307 requires a town committee to submit to the county and State committees information re: town committee members (with a new requirement to include their phone and e-mail contact info), eliminating the requirement that the town committee file member information with the Sec. of State.
 - A town committee will be considered organized once the State committee files its certificate of organization with the Sec. of State under § 2313.

- §§ 2309 and 2312 eliminate the dates on which the State committee must schedule its first county and State committee meetings.
- § 2311 requires a county committee to submit to the State committee information re: county committee members, eliminating the requirement that the county committee file member information with the Sec. of State (similar to § 2307).
 - A county committee will be considered organized once the State committee files its certificate of organization with the Sec. of State under § 2313.
- § 2313 contains the State committee requirement to file its certificate of organization with the Sec. of State, including the new requirement to provide the phone and email contact info for State committee members.
 - In accordance with the changes in §§ 2307 and 2311, the State committee is required to provide a list of the organized town and county committees.
 - **Add semicolon after (b)(2).**
- § 2316 removes the requirement for party committees to hold votes by secret ballot.
- § 2319 removes the requirement to hold party platform conventions at the same convention to nominate presidential electors in presidential years.
 - **Eliminate reference to presidential elections in the section heading, since reference to those elections is removed in the section text.**

* * * Nominations * * *

Sec. 8 proposes amendments to the chapter on **nominations**.

- § 2353 makes clear that a single primary petition can only be filed for one office, not multiple offices.
 - **Add same language to independent candidates' statements of nomination in § 2403 (pg. 25)?**
- § 2354 removes the current law restriction on a voter only being able to sign as many primary petitions as there are nominations for the same office.

- This same change is also proposed for independent candidates’ statements of nomination (Sec. 8, § 2403) and for local election nominations (Sec. 18, § 2681).
- § 2368(3) is a technical correction, since State Representative is no longer considered a “local office.”
- § 2369 requires a party committee to decide any primary election tie—including a primary recount tie—instead of having the tie proceed to a runoff election.
 - Under current law in a separate statute regarding recounts (*see* Sec. 16, § 2602k), when a recount of a primary election results in a tie, a runoff election is required. This can be problematic, because a runoff is a brand new election, and there is the potential for voters from other parties to participate in the runoff primary election of a party.
 - The bill would amend both statutes (this § 2369 and the recount statute in Sec. 16, § 2602k) to provide that the party committee decides all primary ties.
- § 2403 removes the restriction on the number of independent candidate statements of nomination that a voter can sign, as in § 2353.
- § 2414 provides that the Secretary of State must keep candidate disclosures posted online until the primary petition deadline in the following election cycle.

* * * Election Complaint Procedure * * *

Sec. 9 clarifies that the Secretary of State’s **election complaint procedure** only applies to elections in which a federal election involved, which is what is required under federal law.

* * * Conduct of Elections * * *

Secs. 10 and 11 amend provisions in Title 17’s chapter on the **conduct of elections**.

- Sec. 10 is the gender inclusive “voter” change.
- Sec. 11 updates the statute prohibiting political materials in polling places in order to conform to the recent U.S. Supreme Court case Minnesota Voters Alliance v.

Mansky, 138 S.Ct. 1876 (2018) that struck down a Minnesota law as being an overly broad restriction on political speech.

- In accordance with the case, the amendment provides that the prohibited political materials are those that display the name of a candidate on the ballot or an organized political party, or that demonstrate support or opposition to a question on the ballot.

* * * Early or Absentee Voters * * *

Sec. 12 amends the subchapter on **early or absentee voters**.

- Overall, multiple changes eliminate duplicative or unnecessary language and move language to help make the subchapter easier to read and understand. To summarize the substantive changes in this subchapter:
 - Injury is added as a basis for delivery of early voter absentee ballots by justices of the peace.
 - Reference to the type of disability a voter has that would permit the justices to deliver a ballot to him or her is removed. (Current law limits this only to physical disabilities.)
 - Electronic delivery of ballots is permitted for early or absentee voters who are ill, injured, or have a disability.
- § 2531 provides a town clerk with the discretion to provide an early voter absentee ballot to an applicant after the request deadline in cases of emergency, with delivery by mail, electronic delivery, or by the justices of the peace.
- § 2532 is mostly clean-up to make the statute easier to read.
 - **(a)(1)(A) and (B): Convert to (a)(1) and (2).**
 - (b)(1): Adds “injury” and uses more general “disability”
 - *Former (b) [top of pg. 32]:*
 - 1st sentence (re: persons temporarily residing in foreign countries and military service members) is deleted as unnecessary, since under [17 V.S.A. § 2121](#) (defining “residence”), these Vermont voters are like any others.
 - 2nd sentence (re: federal postcard applications) is moved to (c)(2).

- 3rd sentence (re: simultaneous application to register to vote and for an EVAB) is addressed in (c)(1).
 - *Former (f) [pg. 33]: Deleted as unnecessary, since under [17 V.S.A. § 2121](#) (defining “residence”), Vermont voters residing in State institutions are like any others.*
- § 2537 makes clarifying and stylistic changes.
- § 2538 (re: delivery of ballots by justices of the peace) makes clean-up changes; and adds reference to “injury”; removes reference to the type of disability; and:
 - (a)(1) adds reference to the ability to electronically deliver ballots to these voters. [Main permission for this is set forth in § 2539(b).]
 - (a)(4) removes reference to other district offices, as [17 V.S.A. § 2456](#) (disqualifications) controls.
 - (a)(6) give justices of the peace the discretion to deliver early voter absentee ballots outside the town.
- § 2539 makes clean-up changes; and adds reference to “injury”; removes reference to the type of disability; and:
 - (b) allows voters who are ill, injured, or have a disability to have their early voter absentee ballots electronically delivered to them.
- § 2540 adds reference to “injury” and removes reference to the type of disability.
- § 2541(b)’s 1st sentence is deleted as duplicative, because this subject is already covered under § 2538(c)(2) [bottom of pg. 37].
- § 2546b would allow a BCA to vote to permit a vote tabulator to be used in early voting at the town clerk’s office, with early voters who vote in the town clerk’s office depositing their ballots directly into the vote tabulator. The Secretary of State would be required to adopt guidance that towns would need to use to perform this new procedure.
 - **(a)(2): Consider substituting “procedure” for “guidance” in order to be consistent with the Vermont Administrative Procedure Act’s definitions of those terms in 3 V.S.A. § 801(8) and (14):**
 - **(8): “Procedure” means a “practice” adopted in writing (with “practice” defined under (7) as a substantive or procedural**

requirement of an agency, affecting one or more persons who are not employees of any agency, that is used by the agency in the discharge of its powers and duties).

▪ (14): *“Guidance document” means a written record issued by an agency to assist the public by providing an agency’s current approach to or interpretation of law, or describing how and when an agency will exercise discretionary functions.*

- Under this process, the vote tabulator and its ballot box would be required to be secured and sealed, and a record of use would be required to be maintained.
- On election day, the town clerk would need to verify that the number of voters who deposited ballots during early voting matches the number on the vote tabulator count.
- Clerks have asked for this change to help ease the current administrative burden of processing early voter absentee ballots.
- § 2547 revises what makes an early voter absentee ballot “defective.”
 - Added to the list is when the identity of a voter can’t be determined.
 - Removed from the list is the failure to sign the affidavit on the certificate envelope.
 - It’d also be “defective” if a voter already returned a ballot in the same election.

* * * Process of Voting; Count and Return of Votes * * *

Secs. 13 addresses the **process of voting and counting votes**.

- It allows town clerks to destroy unused ballots following the election, rather than the current law requirement to keep them for at least 90 days.
 - This change is consistent with State Archives’ Record Retention Policy.

Sec. 14 deleted in a floor amendment.

* * * Recounts * * *

Secs. 15 and 16 address **recounts**.

- Sec. 15 is a technical correction. It adds reference to the recount threshold for *federal office*, since statute currently fails to address those offices.
- Sec. 16 is related to party committees deciding primary recount ties, which is also addressed in Sec. 8's § 2369.
 - This section makes a cross-reference to the primary statute § 2369 addressed earlier in this bill that covered this issue, in order to provide that the party committee is to decide a primary recount resulting in a tie.
 - This section is also restructured to make it easier to read and understand (including by moving current subsection (d) up to subdivision (a)(2)).

* * * Special Election for Congressional Vacancies * * *

Sec. 17 addresses a logistical issue, because the current deadline for holding a special election to fill a congressional vacancy may not always work in practice.

- This section provides that such a special election may be held on the same day as an upcoming general election, so long as the requirement in a separate statute to make ballots available at least 45 days in advance of the special election can be met.

* * * Local Elections * * *

Sec. 18 loosens restrictions for **local election petitions**.

- First, it eliminates the requirement that a candidate's name appear exactly the same as it does on a voter checklist, in case the candidate wants to include a nickname, for example.
- Second, as provided for primary petitions and independent candidate statements of nomination in Sec. 8's §§ 2354 and § 2403, this section would remove the restriction on the number of local office petitions that a voter may sign.

* * * Voting on Town Manager Form of Governance * * *

Sec. 19 amends the chapter of Title 24 that governs votes on adopting a town manager form of governance. These changes were recommended by the Secretary of State's Office for purposes of clarity.

* * * Campaign Finance; Reporting Dates * * *

Sec. 20 revises campaign finance reporting dates in July and August.

- The rationale is that, because the primary is held on the second Tuesday of August, the current August 15th reporting deadline normally happens after the primary.
- Moving the reporting date to August 1st would provide campaign finance information shortly before the primary.
- If the August report date is moved, then the July report date would likewise be moved.

* * * Effective Dates * * *

Sec. 21 would provide the effective dates. The overall effective date would be July 1, 2019, except:

- The campaign finance reporting dates would change on passage, so they're in place now for the four-year-term offices; and
- The new statute regarding early voting using a vote tabulator in the town clerk's office would take effect on July 1, 2020 to build out some time to allow participating towns to prepare, with the requirement that the Secretary of State adopt the guidelines towns would need to use by Jan. 1, 2020.
 - **(2): Substitute "procedure" for "guidance" if that change is made in Sec. 12's § 2546b.**