

Notes regarding Title 17 and other priorities from Vermont Municipal Clerks and Treasurers Association (VMCTA) Legislative Committee to Senate Government Operations Committee

January 23, 2019

Members of VMCTA Leg. Committee:

- Carol Dawes, Barre City Clerk/Treasurer, chair
- Deb Beckett, Williston Clerk/Treasurer
- Bobbi Brimblecombe, Marshfield Clerk/Treasurer
- Curry Galloway, St. Albans City Clerk/Treasurer
- Stacy Jewell, St. Johnsbury Clerk

TITLE 17 PROPOSED CHANGES

The Title 17 changes below have been discussed with Will Senning, Elections Division at the Secretary of State's office, and we are in agreement on them.

TALLYING WRITE-IN VOTES

Back in 2014 we talked with Senate GovOps about the write-in vote process. Current law requires clerks to tally every write-in vote individually. To give an example, during the 2018 primary elections, Barre City tallied 194 different names for the offices on the three ballots, for a total of 392 votes. Of those 194 names, only 7 of them received more than 10 votes, and none received more than 27 votes. This does not include dead or fictitious people – those are counted as blank votes.

During our previous discussions on the issue, there were some concerns that changing the law would hinder grass-roots efforts to recruit people to run for local office at Town Meetings. Therefore, we would like to ask you to consider making the change for primary and general elections, and not for local elections. If a community wants to adopt a similar process for their local elections, they can do it through charter, just as Brattleboro has. (see Brattleboro language below)

The proposed language would create a system whereby a person could declare themselves a write-in candidate through the Secretary of State's office. The SOS office would spread the word to clerks, who would only need to count write-ins for those named write-in candidates. All ballots would continue to be reviewed for voter intent, as is current practice. (see below for proposed language from 2014)

RETENTION OF BALLOTS

There is an inconsistency between statute and the recently adopted Specific Record Schedule for record retention (SRS) addressing election materials. The statute says unused ballots are to be kept for 90 days. (see below for statute language)

The SRS says unused ballots can be destroyed immediately after elections.

The election handbook put out by the Secretary of State's office says (in part):
After 90 days, the unused ballots may be disposed of for all elections...

These inconsistencies need to be addressed.

EXPANDING AVAILABILITY OF ONLINE ACCESS TO BALLOTS

The Vermont Election Management System creates a ballot that is available via email to military and overseas voters. The voter receives an email directing them to a website where they access the ballot. They print off and mark the ballot, print off an absentee ballot certificate, and return the ballot via mail to the clerk's office.

VMCTA and the Secretary of State's office is interested in offering access to the same system to voters who are sick or have a disability, and are unable to come to the polls. At the moment these voters may ask that a ballot be mailed to them, or for a pair of Justices of the Peace to deliver a ballot to them. Access to the system would offer one more way for voters to receive a ballot and vote it independently. Additionally, there are instances when people are – due to extraordinary circumstances – unable to come to the polls as they had planned on election day. Car accidents, medical or family emergencies. The system can allow voters to participate, and have a friend or family member deliver their ballot to the polls.

Revisions would need to be incorporated into 17 VSA § 2538 (delivery of ballots by justices of the peace), §2531 (application for early voter absentee ballot), and perhaps elsewhere in statute.

FEEDING EARLY/ABSENTEE BALLOTS INTO TABULATORS AS VOTED

Brattleboro charter allows early and absentee ballots to be fed into tabulators as they are voted in the office before the election. Perhaps a version of this language could be incorporated into statute.

NON-ELECTION PRIORITIES

VITAL RECORDS (ACT 46, 2017)

We continue to be concerned about the rollout of the new vital records laws, which are scheduled to go into effect July 1, 2019. Thanks is due in large part to Senate GovOps and House GovOps, who championed a bill during last year's special session that extended the effective date by a year, thereby allowing the Department of Health more time to bring the new system on-line. We are encouraged by recent outreach from the VDH, and inclusion of VMCTA in the review of rules and procedures associated with the rollout of the new system later this year.

RETENTION OF ABSTRACT GRAND LISTS

Statute is silent on the retention of abstract grand lists.

Chapter 29, subchapter 3 of Title 32 specifies what is included in an abstract grand list, which is filed with a town clerk prior to the lodging of the final grand list. The abstract is superseded by the lodged grand list, and towns should be able to discard the abstract once the grand list is lodged. Not only is there no need for both the abstract and the lodged grand list, but the abstracts take up valuable space in our vaults. Such language would need to be added to the subchapter identified above.

PROPOSED FEE INCREASES

As per ACT 155 from last year, a joint report on recording fees from VMCTA and VLCT, and a proposal for increasing such fees was sent last week to House Ways & Means, Senate Finance, House GovOps and Senate GovOps. The report gives information on fees currently collected by town clerks, and the proposed increases. We had our first meeting on the proposed changes with House GovOps earlier today, and hope to be moving forward with a bill.

The committee that's been working on these issues has taken into consideration the comments and concerns voiced last year when the original fee increase request was proposed, and they have revised the proposal to reflect those comments. The report proposes the following:

	Current Fee	Proposed Fee
Standard land record	\$10 per page	\$15 per page
Property Transfer Tax Return	\$10 flat fee for return	\$15 per page
Mylar (map filings)	\$15 per sheet	\$25 per sheet
Vault time (if charged)	\$2 per hour	\$4 per hour

The recommendation includes a mandate that municipalities must set aside a portion of the per fee for recording, restoration, and conservation of town records. These monies are to be used at the discretion of the Town Clerk for digitizing, restoration and conservation of documents, and doing vault improvements.

There are clerks that have comfortable restoration funds, and are concerned about language that mandates the amount of fees to be deposited into such a fund. The language being proposed recognizes this by allowing a town to opt out of the per page restoration fee if they are already budgeting for such needs. The language helps support those clerks who don't have enough funds

for the digitization or restoration work they need to do, or for those clerks who have not been able to get their selectboards to approve creating such a fund.

We believe the language being presented this year reflects the concerns and opinions voiced last year, while offering support to those clerks who need someone to stand up on their behalf when it comes to serving as custodians of their town records.

We welcome a future opportunity to discuss with you the proposed changes, and the need for the fee increase and designated restoration funds to support ongoing recording and records management expenses. Digital systems, archiving, scanners, printers, vaults, computers, book restorations, fire suppression systems, storage systems... these are all expensive, and getting more so every year. These increases and the designated restoration funds will help clerks plan for the perpetual storage and care of their town's records.

STATUTE AND CHARTER SECTIONS ASSOCIATED WITH ABOVE

Below are some of the statute and charter sections referenced above.

Write-ins

Here is the proposed draft change from 2014:

17 V.S.A. § 2370. WRITE-IN CANDIDATES

(a)(1) In order to have votes counted for a write-in candidate under section 2587 of this title, not later than 5:00 p.m. on the Friday preceding the primary election, a write-in candidate shall file with the Secretary of State a form consenting to candidacy for office. The consent form shall set forth the name of the write-in candidate, the name of the office for which he or she consents to be a candidate, the candidate's town of residence, and his or her correct mailing address. The consent form shall set forth the name of the write-in candidate, the name of the office for which he or she consents to be a candidate, the candidate's town of residence, and his or her correct mailing address.

(2) The Secretary of State shall prepare and furnish forms for this purpose.

(b) A write-in candidate shall not qualify as a primary winner unless he or she:

(1) has complied with subsection (a) of this section; and

(2) receives at least one-half the number of votes as the number of signatures required for his or her office on a primary petition,...

An additional edit would be needed as below. This is also language from 2014:

17 VSA § 2587. RULES FOR COUNTING BALLOTS

(e)(1) In the case of "write-in" votes, the act of writing in the name of a candidate, or pasting a label containing a candidate's name upon the ballot without other indications of the voter's intent, shall constitute a vote for that candidate, even though no cross is placed after such name.

(2)(A) A vote for a write-in candidate shall not be counted unless the write-in candidate filed with the Secretary of State not later than 5:00 p.m. on the Friday preceding the general election a form consenting to candidacy for that office. The consent form shall set forth the name of the candidate, the name of the office for which he or she consents to be a candidate, the candidate's town of residence, and his or her correct mailing address.

(B) The Secretary of State shall prepare and furnish forms for this purpose.

(3) The election officials counting ballots and tallying results ~~must~~ shall only list every person those write-in candidates who receives received a “write-in” vote and who complied with subdivision (2) of this subsection, and the number of votes received.

(4) On each tally sheet, the counters shall add together the names of candidates that are clearly the same person, even though a nickname or last name is used.

Brattleboro charter language - Write-ins

24A VSA § 107-2.3 Manner of election

(d) Candidacy for Town officers and Representative Town Meeting members, with the exception of write-in candidates, shall conform with State statute or No. 302 of the Acts of 1959. A candidate who intends to be a write-in candidate for a Town office or a Representative Town Meeting member shall notify the Town Clerk prior to the close of the polls on election day. Only votes for the declared candidates shall be counted.

Unused ballots (ballot retention)

17 VSA § 2568 Removing ballots from polling place; replacement, blank, and unused ballots.

(c) Unused ballots. Ballots originally delivered to the presiding officer that remain undistributed to the voters shall be preserved and returned to the town clerks, and the clerk shall preserve them in such condition, unless called for by some authority entitled to demand and receive them. After 90 days from the date the election is held, they may be destroyed or distributed by the town clerk for educational purposes or for any other purpose the town clerk deems appropriate.

Brattleboro charter language - Feeding early voted ballots into tabulators

24A VSA § 107-2.3a. Early voting

(a)(3) The voter shall mark the early voter absentee ballot and deposit it into a vote tabulator.

(b)(1) During business hours in the Town Clerk’s office, the vote tabulator and ballot bin shall be in a secured are accessible only to election officials and voters. The vote tabulator unit shall be secured with an identifiable seal and the ballot box containing voted ballots shall remain locked at all times and secured with an identifiable seal. Neither seal shall be broken prior to the time of closing the polls on election day. Ballots shall be comingled with those voted at the polls on election day prior to being examined for the purpose of identifying write-in votes.

(2) When an election official is not present or at time other than business hours, the sealed vote tabulator and ballot box shall be secured in the Town Clerk’s office vault. The sealed vote tabulator and sealed ballot boxes shall be transferred to the polling place on election day by two election officials and shall not be opened until the polls have closed on election day.

(3) Once early voting has commenced in the Town Clerk’s office, the Clerk or designee shall certify each day in a record prepared for this purpose that the seals on the vote tabulator and ballot box are intact.

(c) The Town Clerk shall maintain a record of those voting early voter absentee ballots in person. Prior to opening the polls on election day, the number of early voters who vote in person shall match the number of voted ballots displayed on the vote tabulator.

(d) All provisions regarding early voting, including other methods of early voting and those not addressed in this section, shall be prescribed by 17 VSA §§ 2531-2547.