Introduced by Representatives Vyhovsky of Essex, Anthony of Barre City, Burrows of West Windsor, Cina of Burlington, Colburn of Burlington, Colston of Winooski, Donahue of Northfield, Kornheiser of Brattleboro, Mrowicki of Putney, Mulvaney-Stanak of Burlington, Ode of Burlington, Rachelson of Burlington, Satcowitz of Randolph, Sibia of Dover, Small of Winooski, Stebbins of Burlington, Walz of Barre City, White of Bethel, and Yantachka of Charlotte

Referred to Committee on

Date:

Subject: Elections; early voter absentee ballots; defective ballots; opportunity to correct

Statement of purpose of bill as introduced: This bill proposes to allow an early or absentee voter to correct certain defects in the voter’s early voter absentee ballot.

An act relating to correcting defective ballots
It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 17 V.S.A. § 2543 is amended to read:

§ 2543. RETURN OF BALLOTS

(a) After marking the ballots and signing the certificate on the envelope, the early or absentee voter to whom the same are addressed shall return the ballots to the clerk of the town in which he or she is a voter, in the manner prescribed, except that in the case of a voter to whom ballots are delivered by justices, the ballots shall be returned to the justices calling upon him or her, and they shall deliver them to the town clerk.

(b) Once an early voter absentee ballot has been returned to the clerk in the envelope with the signed certificate, it shall be stored in a secure place and shall not be returned to the voter for any reason unless it is for the purpose of allowing the voter to correct an otherwise defective ballot as authorized under section 2547 of this chapter.

(c) If a ballot includes more than one page, the early or absentee voter need only return the page upon which the voter has marked his or her vote.

(d)(1) All early voter absentee ballots returned as follows shall be counted:

(A) by any means, to the town clerk’s office before the close of business on the day preceding the election;

(B) by mail, to the town clerk’s office before the close of the polls on the day of the election; and
(C) by hand delivery to the presiding officer at the voter’s polling

place.

(2) An early voter absentee ballot returned in a manner other than those

set forth in subdivision (1) of this subsection shall not be counted.

Sec. 2. 17 V.S.A. § 2547 is amended to read:

§ 2547. DEFECTIVE BALLOTS

(a) Except for ballots authorized to be corrected under subsection (b) of

this section, if upon examination by the election officials it shall appear that

any of the following defects is present, either the ballot or the unopened

certificate envelope shall be marked “defective” and the ballot shall not be

counted:

(1) the identity of the early or absentee voter cannot be determined;

(2) the early or absentee voter is not legally qualified to vote;

(3) the early or absentee voter has voted in person or previously returned

a ballot in the same election;

(4) the certificate is not signed;

(5) the voted ballot is not in the certificate envelope; or

(6) in the case of a primary vote, the early or absentee voter has failed to

return the unvoted primary ballots.

(b)(1)(A) If the election officials determine that an early voter absentee

ballot would be defective under any of the provisions of subdivisions (4)–(6)
of subsection (a) of this section, those election officials or the town clerk
acting on behalf of those election officials shall make every reasonable effort
during normal business hours to contact the early or absentee voter in order to
allow the voter to correct the defect.

(B) The designated election official or officials shall contact the early
or absentee voter as set forth in section 2546 of this chapter.

(2)(A) The early or absentee voter may correct the defect and return the
ballot in accordance with the manner of returning an early voter absentee ballot
set forth in subsection 2543(d) of this chapter, as applicable.

(B) Alternatively, the voter may vote in person at the polling place
with a replacement ballot that shall be counted, in which case the election
officials shall mark as “defective” and shall not count the voter’s prior
defective early voter absentee ballot.

(3) Any early voter absentee ballot with a defect that is successfully
corrected by the voter as set forth in this subsection shall be counted.

(c) Each defective ballot or unopened certificate envelope shall be:

(1) affixed with a note from the presiding officer indicating the reason it
was determined to be defective;

(2) placed with other such defective ballots in an envelope marked
“Defective Ballots - Voter Checked Off Checklist - Do Not Count”; and
(3) returned in that envelope to the town clerk in the manner prescribed by section 2590 of this chapter.

(e)(d) The provisions of this section shall be indicated prominently in the early or absentee voter material prepared by the Secretary of State.

Sec. 3. 17 V.S.A. § 2546 is amended to read:

§ 2546. DEPOSIT OF EARLY VOTER ABSENTEE BALLOTS IN BALLOT BOX OR VOTE TABULATOR

(a) Not earlier than Processing absentee ballots prior to election day. Beginning 30 days before the opening of the polls on election day, upon receipt of a mailing envelope containing ballots returned by a voter, the town clerk may shall, within three business days or on the next day the office is open for business, whichever is later, direct two election officials working together to do all of the following:

(1) open the outside mailing envelope and sort early voter absentee ballots by ward and district, if necessary; and

(2) determine that the certificate has been properly completed and signed, the voted ballot was placed in the certificate envelope, and the ballot is not defective for any other reason pursuant to section 2547 of this title.

(A) If the ballot is not deemed defective, the town clerk shall check the name of the early voter off the entrance checklist and record the ballot as received and accepted in the online election management system and:
(i) place the certificate envelopes into a secure container marked "checked in early voter absentee ballots" to be transported to the polling places on election day; or

(ii) open the certificate envelope and place the voted ballot in the ballot box or tabulator in accordance with the procedures contained in section 2546a of this title.

(B) If the ballot is deemed defective, the town clerk shall:

(i) check the name of the early voter off the entrance checklist and record the ballot as received and rejected-defective in the online election management system;

(ii) place the ballot in the defective ballot envelope in accordance with the procedures of subdivisions 2547(b)(1)–(3) of this title;

(iii) not later than the next business day mail a postcard, designed and provided by the Secretary of State’s office, to the voter at the address where the ballot was sent informing the voter that the ballot was deemed defective and rejected, the reason it was deemed defective, and the voter’s opportunity to correct the error pursuant to subsection 2547(d) of this title; or

(iv) at the clerk’s discretion, not later than the next business day, contact the voter by phone or e-mail to inform the voter of the status of the voter’s ballot and the voter’s opportunity to correct the error.
(v) Beginning five business days preceding the election, the clerk is not required to send a postcard to those voters whose ballots have been deemed defective. In these cases, the clerk shall make a reasonable effort to provide notice to the voter using any other contact information that the clerk has on file and shall record the ballot as defective in the online election management system not later than 24 hours after the ballot is deemed defective.

(3) check the name of the early voter off the entrance checklist; and

(4) place the certificate envelopes into a secure container marked “checked in early voter absentee ballots” to be transported to the polling places on election day.

(b) Processing absentee ballots on election day. If the certificate envelopes have not been opened and the voted ballots placed in the ballot box or tabulator, the town clerk or presiding officer shall deliver the unopened early voter absentee ballots to the election officials at the place where the entrance checklist is located. Upon the opening of the polls during the polling hours on election day:

(1) If the ballots are in a container marked “checked in early voter absentee ballots,” one election official shall open the certificate envelopes, turn the certificate side face down, and hand the envelope face down to a second
election official from a different political party, who shall remove the ballots
from the envelopes and deposit them in the ballot box or vote tabulator.

(2) If the ballots have not been previously checked off the entrance
checklist and if two election officials, from different political parties,
determine that the certificate on the envelope is properly completed and signed
by the early voter, the name of the early voter appears on the checklist, and the
early voter is not a first-time voter in the municipality who registered by mail
and is marked on the checklist as requiring additional documentation, the
election officials shall mark the checklist, open the certificate envelope, turn
the certificate side face down, and hand the envelope face down to a third
election official who shall remove the ballots from the envelopes and deposit
the ballots in the ballot box or vote tabulator.

(3)(A) If the early voter is a first-time voter who registered by mail or
online, two election officials from different political parties shall determine
whether the identification required under subdivision 2563(1) of this title has
been submitted by the voter. Upon ascertaining that the proper identification
has been submitted by the voter, the election officials shall mark the checklist,
open the certificate envelope, turn the certificate side face down, and hand the
envelope face down to a third election official who shall remove the ballots
from the envelopes and deposit the ballot in the ballot box or vote tabulator.
(B) If the proper identification has not been submitted, the ballot shall be treated as a provisional ballot, as provided in subchapter 6A of this chapter.

(c) All early voter absentee ballots shall be commingled with the ballots of voters who have voted in person.

Sec. 4. 17 V.S.A. § 2546a is amended to read:

§ 2546a. DAY PRECEDING ELECTION; DEPOSIT OF EARLY VOTER ABSENTEE BALLOTS IN VOTE TABULATOR

(a) Generally. Notwithstanding any provision of law to the contrary, if a town will be using a vote tabulator for the registering and counting of votes in the upcoming election and will check in early voter absentee ballots in accordance with subsection 2546(a) of this chapter for that election, the board of civil authority may vote to permit elections officials to deposit those early voter absentee ballots that have been processed in accordance with subsection 2546(a) of this title and have not been deemed defective into the vote tabulator in accordance with the provisions of this section. This depositing of these ballots shall take place at the town clerk’s office on the day at any time during the 30 days preceding the election.

(b) Notice.

(1) If a board of civil authority votes to deposit ballots as described in subsection (a) of this section, the town clerk shall post notice that ballots will
be so deposited in at least two public places in the municipality and in or near the town clerk’s office not less than 30 nor more than 40 days before the election. If a municipality has more than one polling place and the polling places are not all in the same building, the notice shall be posted in at least two public places within each voting district and in or near the town clerk’s office. The process shall be conducted during normal business hours if practicable or, if conducting the process at a time other than normal business hours, notice of the date(s), time(s), and location of the processing shall be posted at the clerk’s office and two other public places at least three days in advance.

(2) In addition, at least five days before the day preceding the election, the notice shall be published in a newspaper of general circulation in the municipality and on the municipality’s website, if the municipality actively updates its website on a regular basis.

(3) The notice shall include the date and time for the count, inspection, and depositing of the ballots and the location of the town clerk’s office.

(c) Officials. The town clerk and at least two other election officials, from different political parties to the extent practicable, shall be present for the inspection of the sealed certificate envelopes and the processing of the ballots described in this section.

(d) Count and inspection:
(1) On the day preceding the election, at least one hour prior to depositing the ballots in the vote tabulator, the town clerk and the election officials shall:

(A) first open the secure container marked “checked in early voter absentee ballots,” count the certificate envelopes containing those ballots, and record the number counted; and

(B) permit these certificate envelopes to be inspected by members of the public.

(2) Any early voter absentee ballot that is returned after the expiration of the period for the count and inspection shall be processed on the day of the election in accordance with section 2546 of this subchapter.

(e) Processing.

(1) Immediately after the expiration of the period for the count and inspection described in subsection (d) of this section, the town clerk and election officials shall open each certificate envelope containing an early voter absentee ballot that was counted under subdivision (d)(1) of this section and deposit each ballot into a vote tabulator.

(2) The town clerk and the election officials shall ensure that all procedures for handling ballots are followed to the fullest extent practicable.

(3) At the end of the processing, the town clerk shall verify that the vote tabulator’s memory card is locked in place and shall sign a statement verifying
how many early voter absentee ballots were counted by the vote tabulator and
that the memory card is so locked. The town clerk shall compare the vote
tabulator’s number of counted ballots to the original count of those ballots
described in subdivision (d)(1) of this section.

(f) Security. The town clerk shall otherwise comply with all provisions of
this title relating to the security of the vote tabulator.

(g) Election day. On the day of the election, when the vote tabulator is
turned on at the polling place, the town clerk shall verify that the number of
ballots that the vote tabulator displays as having been counted matches the
number that the town clerk verified the tabulator counted on the preceding day.

(d) Processing.

(1) The tabulator or secure ballot box shall be removed from the vault
by two election officials and located where it can be observed at all times by
the clerk or another election official.

(2) If using a tabulator:

(A) On a form provided by the Secretary of State’s office, the seal
number on the tabulator memory card must be recorded when the tabulator is
removed from the vault and the election official shall affirm that the seal
number on the memory card is the same seal number as was recorded
following the previous time that ballots were processed through the tabulator.
The election official shall also confirm that the lock on the ballot bin has not

been tampered with.

(B) The tabulator shall be plugged in, turned on, and the election

official shall record the number of ballots that the tabulator indicates have been

processed and confirm that that number matches the number of ballots

recorded when the tabulator was turned off following the last time ballots were

processed.

(C) When all ballots have been processed for the day, the election

official shall record the number of ballots that the tabulator indicates have been

counted, shall verify that the memory card is sealed in place, and shall record

the seal number.

(D) The tabulator shall be turned off, unplugged, and returned to the

vault for storage by two election officials.

(E) The election officials shall otherwise comply with all provisions

of this title relating to the security of the vote tabulator.

(3) After confirming that the voter’s name has been marked off the

checklist in accordance with subdivision 2546(a)(2)(A) of this subchapter, one

election official shall open the certificate envelope, turn the certificate side

face down, and hand the envelope face down to the second election official,

who shall remove the ballots from the envelopes and deposit them in the secure

ballot box or vote tabulator.
(4) The secure ballot box or tabulator containing the voted ballots must
be stored securely in the vault when not in the presence of two election
officials. Ballots deposited in the tabulator or ballot box must be transported to
the polling place on election day in the presence of at least two election
officials, to the extent possible from different parties.

(e) Election day.

(1) On the day of the election, the sealed vote tabulator or sealed ballot
boxes, or both, containing voted ballots shall be transferred to the polling place
by two election officials.

(2) When the vote tabulator is turned on at the polling place, if voted
ballots were fed into the tabulator preceding the day of the election, the town
clerk or presiding officer shall verify that the number of ballots that the vote	
tabulator displays as having been counted matches the number recorded the
last time that the tabulator was used to process ballots at the clerk’s office and
that the seal number on the memory card is also the same as the last seal
number recorded at the town clerk’s office.

(f) Rules. The Secretary of State may adopt rules to implement the
provisions of this section.
Sec. 5. 17 V.S.A. § 2546b is amended to read:

§ 2546b. EARLY VOTING IN TOWN CLERK’S OFFICE; DEPOSIT INTO VOTE TABULATOR

(a)(1) A board of civil authority may vote to permit its town’s registered early or absentee voters to vote in the town clerk’s office in the same manner as those voting on election day by marking their early voter absentee ballots and depositing them into a vote tabulator or ballot box.

(2) If a board of civil authority votes to permit early voting as described in subdivision (1) of this subsection, the town’s process for conducting this early voting shall conform to the provisions of this section and to procedures that the Secretary of State shall adopt for this purpose.

(b)(1) During business hours in the town clerk’s office, the ballot box or vote tabulator and ballot bin shall be in a secured area 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.

(2) Once early voting has commenced in the town clerk’s office, the town 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.
(3) When an election official is not present or at times other than business hours, the ballot box or sealed vote tabulator and ballot box bin shall be secured in the town clerk’s office vault.

(4) The town clerk shall maintain a record of each early or absentee voter who voted in person in accordance with this section and shall mark these voters as having voted early in the clerk’s office in the online election management system.

(c) On the day of the election:

(1) The ballot box or sealed vote tabulator and sealed ballot boxes ballot bin 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.

(2) When the vote tabulator is turned on at the polling place, the town clerk shall verify that the number of ballots that the vote tabulator displays as having been counted matches the number of voters who deposited their early voter absentee ballots in the vote tabulator in accordance with this section and any early voter absentee ballots that were processed and deposited in the vote tabulator under section 2546a of this subchapter.

(3) All early voter absentee ballots shall be commingled with those voted at the polls on election day prior to being examined for the purpose of identifying write-in votes.
Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2021.