

RECOMMENDATIONS TO SENATE GOVERNMENT OPERATIONS COMMITTEE ON MAKING 'VOTE BY MAIL' A PERMANENT OPTION FOR VERMONT VOTERS

This document contains recommendations from multiple organizations with an interest in Vermont's elections process, especially ways to maximize safe and full public participation.

We have identified key provisions (1-5 in red titles below) that we believe must be included in a successful policy to make universal vote by mail a permanent feature of all future general elections in Vermont. These recommendations are in the form of bullet points, which provide an overview of the significant provisions along with some examples of statutory and regulatory provisions from other states demonstrating how they have enacted similar policies. Where possible, we have also included Vermont's emergency laws and directives for the 2020 election that temporarily implemented many of these policies.

Below the top five recommendations, we have included additional recommendations that we believe deserve consideration at this time.

1. Ballots automatically mailed to every active registered voter

- The Secretary of State [automatically mails ballots to all voters](#). Voters don't have to apply to receive mail ballots. Voting by mail is considered the default method for receiving and returning a ballot, although it is important that other options remain available to voters. Voters may still vote in person at local polling places even if they've received a ballot in the mail, with security measures in place to prevent anyone from voting more than once.
- Vermont temporarily enacted this policy for the 2020 election cycle through [Act 92 \(2020\)](#), [Act 135 \(2020\)](#), and the Secretary of State's [First Statewide Elections Directive](#).
 - "Sec. 3. ELECTIONS IN THE YEAR 2020; SECRETARY OF STATE; GOVERNOR; TEMPORARY ELECTIONS PROCEDURES
 - (a) In the year 2020, the Secretary of State is authorized, in consultation with the Governor, to order or permit, as applicable, appropriate elections procedures for the purpose of protecting the health, safety, and welfare of voters, elections workers, and candidates in carrying out elections, including:
 - (1) requiring mail balloting by requiring town clerks to send ballots by mail to all registered voters;
 - (2) creating early or mail ballot collection stations;
 - (3) permitting municipal clerks to process and begin counting ballots in a 30-day window preceding the day of an election

- (4) permitting drive-up, car window collection of ballots by election officials;
- (5) extending the time for municipal clerks to process and count ballots; and
- (6) extending voting hours on the day of an election.

(b) For any temporary elections procedure the Secretary of State orders or permits under this section, the Secretary shall adopt any necessary corresponding procedures that ensure the public can monitor polling places and the counting of votes.

(c) If the Secretary of State orders or permits the mailing of 2020 General Election ballots to all registered voters pursuant to subsection (a) of this section, the Secretary shall:

- (1) inform the Governor as soon as reasonably practicable following the Secretary's decision to do so; and
- (2) require the return of those ballots to be in the manner prescribed by 17 V.S.A. § 2543 (return of ballots) as set forth in Sec. 1a of this act, the provisions of which shall apply to that return." ([Act 135 \(2020\)](#), Sec. 1. *Amending Sec. 3 of Act 92*)

- **"Mailed Ballots.** A ballot will be mailed to every active voter on the statewide voter checklist. "Active" voters are any voters that have not been sent a challenge letter by the BCA asking the voter to affirm their residency, or who have responded to any such letter and have affirmed their residence.
 - Ballots will be mailed to all active registered voters starting Friday, September 18.
 - Ballots will be mailed or otherwise delivered to all military and overseas voters no later than the September 19 deadline mandated by federal law.
 - All ballots will be mailed from a central location by the Secretary of State's Office.
 - For mailing purposes, the Secretary of State will use the mailing address contained in any pending request for a General Election ballot first, and if none will use the mailing address in the voter's record second, and if none the legal address in the voter's record.
 - The issue date for all ballots will be recorded in the statewide election management system by the Secretary of State on a batch basis as they are sent. Clerks will only be required to record the date that ballots are returned. Clerks will be required to enter the request, issue, and return date for any ballots requested by voters after the statewide mailing is sent, including for those voters who may register after that date.
 - Postage for the mailing of ballots and the return of ballots to the Clerks by voters will be paid by the Secretary of State's office. All envelopes will be pre-paid." ([First Statewide Elections Directive](#))
- **"Appearing In-Person without a Ballot on Election Day After Receiving One by Mail.** If a voter who has been mailed an absentee ballot requests

to vote in person at the polls on Election Day, and the checklist indicates that they have not returned a ballot or otherwise voted in that election, the voter shall be allowed to cast a ballot at the polls. The voter will not be required to produce the ballot that was mailed to them in order to vote on Election Day. The voter will be required to sign an affidavit that they have not previously returned the ballot sent to them or cast any other ballot.”
([First Statewide Elections Directive](#))

- Other states with this policy include:
 - Colorado, where it’s enacted in [C.R.S. 1-7.5-103\(4\)](#), [C.R.S. 1-7.5-104](#), [C.R.S. 1-7.5-104.5](#), [C.R.S. 1-7.5-107](#), [C.R.S. 1-2-301](#)
 - Washington, where it’s enacted in [RCW 29A.40.010](#), [RCW 29A.40.070](#), [RCW 29A.40.091](#)
 - Oregon, where it’s enacted in [ORS 254.465](#), [ORS 254.470](#)

2. Multiple return options for mail ballots: drop boxes, polling places, and election offices

- Voters can return mail ballots by mail, at a secure drop box, or hand off their ballot to an election worker at their local election office or in-person voting locations. Experience in other vote by mail states indicates that significant numbers of voters prefer to use non-mail options to return mail ballots and those options should be widely available. The location of drop boxes and other return methods should be dictated by clear statewide standards that ensure they are convenient and easily accessible to all voters.
- Other states with this policy:
 - California: [Cal. Elec. Code § 3017](#), [Cal. Elec. Code § 3025](#), [2 CCR § 20130-38](#)
 - Colorado: [C.R.S. 1-7.5-107\(4\)&\(4.3\)](#), [8 CCR 1505-7.5 & 7.10](#)
 - Washington: [RCW 29A.40.170](#)

3. Prepaid postage

- The [state should cover the cost](#) of return postage for mail ballots to keep that financial burden off of the voters.
- Vermont temporarily instituted this in 2020 and this policy should be made permanent.
 - “Postage for the mailing of ballots and the return of ballots to the Clerks by voters will be paid by the Secretary of State’s office. All envelopes will be pre-paid.” ([First Statewide Elections Directive](#))
- Other states
 - Hawaii: [HRS § 11-182](#)
 - Oregon: [ORS 254.473](#)
 - Washington: [RCW 29A.40.091\(4\)](#)

4. Precanvass

- Mail ballots should be [processed](#) (or “precanvassed”) well in advance of election day to facilitate counting, avoid election night delays, and allow for any ballot problems to be identified as early as possible. Processing generally involves verifying the identity of the voter and making sure the voter has not already cast a ballot, removing the ballot from the outer envelope, doing anything else necessary to prepare it for tabulation. Ordinarily, Vermont begins prec canvass the day before the election ([17 V.S.A. § 2546a](#)). For 2020, Vermont temporarily moved that date up to 30 days before the election. This earlier date should be made permanent and election administrators should be encouraged and possibly required to process ballots shortly after they arrive.
- Vermont temporarily enacted this policy for 2020:
 - **“Ballot Processing.**
Local election officials may process ballots returned by mail or voted in the Clerk’s office through the tabulator or into a secure ballot box during the 30 days preceding election.
 - At a minimum, ballots shall be processed in the presence of at least two election officials who, if possible, shall be from different parties.
 - The process shall be conducted in accordance with guidance issued in conjunction with the Directive by the Secretary of State’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 or at a time when your office is closed due to COVID-19, 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.
 - Any member of the public requesting to observe the process shall be provided an opportunity to do so. Upon request of a member of the public to observe the process, if in-person observation by members of the public is not possible due to restrictions related to COVID-19, the process may be live-streamed in some manner to allow for remote viewing or may be recorded and the recording provided to those who request it for viewing.
 - In towns that count their ballots by hand, the voted ballots shall be deposited in a secure ballot box to be commingled with any ballots cast at the polls on Election Day and counted after the close of the polls.
 - Pursuant to this Directive, strict chain of custody procedures regarding voted ballots, ballot boxes, and tabulators shall be issued by the Secretary of State for conducting this process.” ([First Statewide Elections Directive](#))
- Other states
 - California: [Cal. Elec. Code § 15101](#)
 - Colorado: [C.R.S. 1-7.5-107.5](#)
 - Oregon: [ORS 254.478](#)
 - Washington: [RCW 29A.40.110](#)

5. Cure process

- There is a uniform process through which voters are quickly notified if they failed to sign their certificate or follow any other instruction that is necessary for their ballots to count, and there is a process that allows them [to correct \(or “cure”\)](#) that mistake. Some election administrators in Vermont will inform voters of mistakes and allow them to correct errors, but this occurs on a case-by-case basis and there is no uniform statewide process. Voters should be notified promptly, providing them with enough time to make a correction (Colorado requires the voter be contacted within 2-3 days, California requires notification at least 8 days before the election is certified), and the deadline for curing ballots should extend beyond election day, leaving enough time for voters to receive notice and take whatever steps are necessary to cure. Colorado allows ballots to be cured up to 8 days after the election, for example. Arizona gives voters until 5 days after the election, and Washington gives voters 21 days after election day. Notification could happen by mailing voters a letter or postcard or through email, text, or phone call if the voter provides their email address or phone number and requests to be contacted that way. Minnesota automatically sends a replacement ballot if the original ballot is received and rejected more than 5 days before the election. There could also be a combination of these options made available. Like the postmarked ballot acceptance date, the deadline for curing ballots could also affect other deadlines, such as the deadline for clerks to return election returns ([17 V.S.A. 2588\(6\)\(c\)](#)).
- Other states:
 - California: [Cal. Elec. Code § 3019](#)
 - Colorado: [C.R.S. 1-7.5-107.3\(1.5\)](#), [8 CCR 1505-1 Rule 7.7](#)
 - Minnesota: [Minn. Stat. § 203B.121 Subd. 2\(c\)\(2\)](#)
 - Oregon: [ORS 254.431](#)
 - Washington: [WAC 434-261-050](#)

Additional Recommendations:

- **Ballots postmarked by election day are counted if received after the election**
 - Ballots returned by mail and received within a certain time period after the election are still counted as long as they are postmarked by election day. Currently Vermont requires ballots be received by election day ([17 V.S.A. § 2543](#)). [Some states](#) count ballots received after election day as long as they are postmarked on or before then. That period can range from 3 days (North Carolina, Kansas, Virginia) to up to 14 (Utah). Longer periods can delay final results and certification but can also allow more ballots to be counted. Whatever date chosen may require other deadlines, such as for curing ballots, certification, requesting a recount, etc., to be moved as well. Another consideration is how to address situations where the Post Office does not postmark a ballot. States address this in various ways. Nevada has a different acceptance date for ballots without a clear postmark (3 days after the election rather than the normal 7).

California accepts ballots without a clear postmark if the date entered by the voter on the certificate envelope when signing the affirmation was on or before election day.

- Other states:
 - California: [Cal. Elec. Code § 4103](#)
 - District of Columbia: [DC ST § 1-1001.05\(a\)\(10A\)](#)
 - Nevada: [NRS 293.317](#)
 - Utah: [20A-3a-204\(2\)](#)

- **No inner certificate envelope requirement**
 - Currently, Vermont mail voters must seal their ballots in a separate inner “certificate” or “ballot” envelope, sign an attestation on that envelope, and then place that envelope in another outer “return” envelope, which is sealed and then mailed or deposited in a drop box. Ballots returned without the certificate envelope (sometimes called “naked ballots”) are not counted ([17 V.S.A. § 2547\(a\)\(4\)](#)). Many states have begun to drop the inner envelope requirement, allowing voters the option to conceal their ballot in another envelope or secrecy sleeve to preserve the secrecy of their votes once their ballots are separated from the return envelope. (In Colorado, for example, the instructions mailed with the ballot can also be used as an optional secrecy sleeve to cover the completed ballot when returned). Under that system, if a ballot is returned without an inner envelope it is still counted. Voters are still required to sign a certificate, as is currently required by Vermont law ([17 V.S.A. § 2542](#)), but that certificate and their signature is on the outer return envelope. In some jurisdictions, in order to protect voter privacy, that certificate is on the back of the return envelope and is covered by the flap when the envelope is sealed.
 - Other states:
 - Colorado: [1-7.5-103\(5\),\(7\)&\(8\)](#), [1-7.5-107\(3\)](#)
 - Oregon: [ORS 254.470\(2\),\(6\)&\(8\)](#),
 - Utah: [20A-3a-202\(4\)](#)

- **Access to people with disabilities**
 - In order to allow people with disabilities full and independent access to our democratic process, Vermont should take appropriate steps to make it possible for these individuals to receive, complete, and return their ballots electronically. Additional effort must also be made to make sure that people with disabilities who choose to vote in person at the polling place have the assistance and technology they may need to do so successfully.

- **Collect more data and study opportunities for further improvement**
 - Some additional record keeping will be helpful to identify possible areas in need of further improvement. For instance, currently there is no requirement for clerks to keep a record of ballots that arrive after Election Day. That data should be collected and shared with the Secretary of State. Further, if universally mailed

ballots are made permanent this year, the Secretary of State should conduct a study of Vermont's voting processes after the 2022 election and identify additional opportunities for improvement at that time.

We are grateful for the opportunity to offer these recommendations.

Sincerely,

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