

To: Chair Matt Birong, House Committee on Government Operations

From: Josh Hanford, Director of Intergovernmental Relations; Samantha Sheehan, Municipal Policy and Advocacy Specialist

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RE: Elections Bill, Technical Corrections Needed

As we begin the new legislative biennium, the VLCT team looks forward to working in partnership with you to help Vermont's cities and towns meet the functions of today's local government and take the action needed to solve the challenges of the 21st century. Over time, our Municipal Assistance Center (MAC) team at VLCT, while working with local municipal officials, has encountered areas of Vermont election and government operations law which are unclear, conflict with other statutes, or may create unworkable vacancies or conflicts within the systems of local government. VLCT requests that the Senate Government Operations committee consider action this session to remedy these issues by adopting the technical corrections listed here.

Balloting of Officers at Town Meeting

- Clarify method of election for town officers: Amend 17 V.S.A. § 2680 (b) to say “Officers. Once a municipality votes to elect any or all officers by the Australian ballot system, such officers shall be elected in that manner until the municipality votes to discontinue use of the system” and add (b)1 to say “Shall (name of municipality) elect (specify the officer to be elected) by Australian ballot?” or “Shall (name of municipality) elect all officers by Australian ballot?”

This would ensure that towns who elected some town officers (such as moderator) from the floor and elect some officers (such as selectboard members) by Australian ballot are compliant with the law. This change would also be more consistent with the requirements for the balloting of public questions.

Appointments, Vacancies, and Special Elections

- Candidate Consent and Special Elections for Vacant Elected Offices: Amend 17 V.S.A. 2681(a)(1)(A) to institute a shorter timeframe for candidate consent and petition submission when electing officers by Australian ballot at special town meetings. In a town that elects its officers by Australian ballot, if voters petition for a special town meeting to fill a vacancy, the nominating process associated with that voting is longer than the timeframe in which the selectboard can warn the special town meeting, thereby unnecessarily extending the period of time the vacancy goes unfilled.
- Reconcile requirement to fill vacancies for elected offices during regular elections and annual town meetings: We interpret 24 V.S.A. § 963 to require towns to fill vacancies “when an **election**

is had.” Considering that 24 V.S.A. § 962 states, “A town at a **special meeting** may fill a vacancy in a town office” it would appear that a town could hold a special town meeting and choose not to hold an election to fill a vacancy.

- Provide a reasonable vacancy period for prior to annual town meetings: For offices elected at annual town meetings, amend 24 V.S.A. § 963 to specify a clear timeframe (we recommend 90 days) before a town’s annual meeting during which a vacancy does not have to be filled.
- Set terms for certain elected town offices: Amend statutes in Title 17, Chapter 55, Subchapter 2 governing the appointment of certain elected officers (Town Clerk, Town Treasurer, Collector of Delinquent Taxes) to set statutory terms such as one year or until the next annual election. The expiration of the term will avoid arguments that these officers can only be removed for cause, which necessitates notice and an opportunity to be heard, often requires hiring an attorney, and unnecessarily subjects municipalities to undue liability exposure.
- Clarify that the law governing vacancies applies to elected officers only: Amend 24 V.S.A. § 961 to read, “*When an elected municipal officer resigns the officer's office.*” The current statute can be misinterpreted to apply to appointed officers, which necessitates posting for their vacancy and subjecting the filling of their vacancy to a town-wide vote when the legislative scheme of the statutes clearly only concerns elected officers.
- Elections to Fire Districts: Amend 20 V.S.A. § 2485 to clarify whether prudential committee members must be residents of the fire district they serve.
- Reconcile requirements related to the appointment of constable to be aligned with similar statutes related to other offices such as town clerk, treasurer, or collector of delinquent taxes:
 - Amend 17 V.S.A. § 2651a to read, “A town may vote ~~by Australian ballot~~ at an annual meeting to authorize the selectboard to appoint a first constable, and if needed a second constable, in which case at least a first constable shall be appointed.” Why impose on towns the requirement to use the Australian ballot system of voting when there is no similar requirement when authorizing selectboards to appoint other town officers such as town clerk, treasurer, or collector of delinquent taxes?
 - Amend 17 V.S.A. §§ 2651a(a)(1) and (a)(3) to read, “an annual or special meeting.” This change will allow towns to vote to authorize selectboards to appoint constables at both special and annual meetings, providing the flexibility necessary to address evolving needs.
 - Delete 17 V.S.A. § 2651a(b) which reads, “Notwithstanding the provisions of subsection (a) to the contrary, a vote to authorize the selectboard to appoint constables shall become effective only **upon a two-thirds vote** of those present and voting, if a written protest against the authorization is filed with the selectboard at least 15 days before the vote by at least five percent of the voters of the town.” This statute imposes an unnecessary impediment to action.
 - Amend 24 V.S.A. § 1936a to include, “A vote to prohibit constables from exercising any law enforcement authority shall remain in effect until rescinded by the majority vote of

the registered voters voting at an annual or special meeting, duly warned for that purpose.”

- o Amend 24 V.S.A. § 1529, which governs the constable as collector, by amending it to read, *“The first constable, if elected, shall be collector of State, county, town, and town school district taxes when a collector of taxes is not elected at the annual town meeting, and shall pay over the taxes collected agreeably to the warrants for their collection.”*

Town Meeting and Special Meetings

- Setting the date of town meeting: Amend 17 V.S.A. § 2640(b)(1) to include, *“A vote by a town changing the date of its annual meeting shall remain in effect until rescinded by the majority vote of the registered voters voting at an annual or special meeting, duly warned for that purpose.”* Every year, municipalities ask us how long this and other votes remain in effect, and VLCT advises that without this language they should vote on the article each year.
- Clarify application of Open Meeting Law: Amend 17 V.S.A. §§ 2640 (annual meetings), 2643 (special town meetings), and 2680(h)(1) (town informational meetings) to clarify that they are meetings of the public, not of any particular public body (despite the possible presence of a quorum of any public body in attendance) so that the requirements of the Open Meeting Law are not triggered.

Balloting Requirements

- Clarify requirement for informational hearing: Amend 17 V.S.A. § 2680(h)(1) to read, *“Whenever a municipality has voted to adopt the Australian ballot system of voting on any public question or budget, except the budget revote as provided in subsection (c) of this section or elsewhere in statute where the Australian ballot system of voting is required, but no mention is made of an accompanying informational hearing, the legislative body shall hold a public informational hearing on the question by posting warnings at least 10 days in advance of the hearing in at least two public places within the municipality and in the town clerk’s office”*. This change will help resolve the dispute of whether an informational hearing is required by other statutes when voting by law must occur by Australian ballot (e.g., see adoption of municipal bylaws under 24 V.S.A. § 4442(c), validation of municipal meetings under 24 V.S.A. § 2662, and the cannabis opt-in vote under 7 V.S.A. § 863(a)(2)).
- Clarify in-person requirement for Australian ballot voting: Amend 17 V.S.A. § 863(a)(1) and 17 V.S.A. § 2651a(a)(3) and (b) to remove “present and...” prior to Australian ballot. Some municipalities are misinterpreting this turn of phrase as imposing an in-person component to Australian ballot voting.

Current Gaps

- Create a process for the withdrawal of voter-backed petitions: Amend 17 V.S.A. § 2642 to include a process for the lead petitioner to withdraw a petition other than having petitioners withdraw their names.
- Create a process to revert to an elected office from an appointed one: Amend 17 V.S.A. §§ 2661e and to prescribe a process like that for converting from an elected office to an appointed one.
- Create a process to address errors on the annual town meeting ballot: For towns voting by Australian ballot, there is no mechanism to correct minor errors on the ballot (while there is for the warning). We suggest amending 17 V.S.A. § 2662 to allow for such defects to be cured by resolution of the selectboard by a two-thirds vote.

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