



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNSEL

MEMORANDUM

To: Senate Committee on Government Operations
From: Legislative Counsel
Date: April 24, 2025
Subject: Proposals of Amendment to H.474

Chair Collamore and Committee Members:

This memorandum outlines the various proposals of amendment to H.474 (an act relating to miscellaneous changes to election law) for the Committee to weigh. Our Office will draft any subsequent amendments in accordance with the Committee's directions.

Changes Incorporated into Committee Amendment Draft 1.2:

1. Electronic ballot return: Sec. 6, re the 'Electronic Ballot Returns Report' has been deleted.
2. Write-in candidates: See Secs. 9-12 of the bill.
 - a. Deadlines: The filing deadline for write-in candidates has been changed to "not later than 7:00 p.m. on the Thursday preceding the election."
 - b. Clarifying Language: Sec. 11, [17 V.S.A. § 2587](#), subdivision (e)(3)(C).
Change to:
~~(B)(C)~~ Names of fictitious or deceased persons who have not filed in accordance with section 2370, 2472, or 2702 of this title shall not be listed individually and shall be recorded on the tally sheet as a blank vote in aggregate as "other write-ins."
3. Local election deadline: The proposed amendment to [17 V.S.A. § 2681](#) (Nominations; petitions; consents) has been deleted and will leave statute 'as is.' It would have changed the deadline for nominations of the municipal officers by petition (i.e. "on the ~~sixth~~ fifth Monday preceding the day of the election").

Additional Changes Offered by Committee Members:

1. Audits of tabulators: See Sec. 26 of the bill.
 - a. Committee request: 1) restore the word "random," 2) and insert language regarding the Secretary of State having discretion to make targeted audits.
 - b. Summary of Secretary of State's Office's Comments: The Secretary of State's Office's audits are already, in practice, more selective than purely random. Adopted [Rule 04 010 001, Subsection E.b.](#), frames the word "random" differently: "The polling places to be audited shall be selected at

random by the Secretary. Adjustments to the random selection may be made to ensure representation from diverse geographic areas and diversity in the size of the polling places selected.”

- c. **Decision Point:** There seems to be a difference in how the Secretary of State’s Office has interpreted the word “random” through adopted rule and how committee members interpret “random,” that is, perhaps more like a lottery. The statutory language may be amended to provide clarity as to what the Committee believes “random” should mean. The Committee could replace the word “random” and provide additional audit directions to the Secretary of State, or insert language that nullifies Rule 04 010 001 and directs the Secretary of State to adopt different rules for auditing tabulators, or pursue another option.
2. Candidate name order:
- a. Committee request: Add a new bill section amending law so that candidates will be listed on ballots alphabetically by last name and according to what they state on their consent forms.
 - b. Legal Note: Currently, under [17 V.S.A. s 2472\(b\)\(2\)](#), “the names of the candidates for each office shall be listed in alphabetical order by surname”
 - c. Summary of Secretary of State’s Office’s Comments: The Secretary of State’s Office indicated that their current practice is to list candidates alphabetically by last name as listed on their *voter checklist*, rather than consent form because 1) a want to avoid introducing errors based in inscrutable handwriting on the consent forms, and 2) a want to sync candidate names on ballots with their names on campaign finance disclosures.
 - d. **Decision Point:** The Committee may opt to amend statute so that a candidate’s last name on a ballot is pulled from the filed consent form rather than the voter checklist, clarify statute to buttress current practice, or pursue another option.

Proposed Amendments from the Secretary of State’s Office:

- 1. Write-in candidates, Non-filing winners: See again Secs. 9-12 of the bill.
 - a. Summary of Secretary of State’s Office’s request: The Secretary of State’s Office believes that it is logistically impractical for the provision (stated in triplicate) to enable non-filing write-in candidates to still win if they have the most votes. They, instead, would prefer something like, ‘if there is no named party candidate, then all write-ins are counted.’
 - b. **Decision Point:** The Committee may opt to amend the bill according to the Secretary’s request, keep the House’s proposed amendments, keep the existing statutory language ‘as is,’ or pursue another option.
- 2. Campaign finance:
 - a. Summary of Secretary of State’s Office’s request: The Secretary of State’s Office, after review from the AG’s office, is seeking to re-work the campaign finance amendments in the bill, to compel disclosures by individuals who expend at least \$1,000 attempting to influence an election

(these particular individuals are not coordinating with any campaign). A shortened version of their proposal is included as an appendix for your reference (see Appendix i).

b. Legal Notes:

- i. Number of people to form a PAC: The bill, currently, will change what constitutes a “political action committee” (a “PAC”) from any two people trying to influence an election to only one person. This proposal from the Secretary of State’s Office drops that proposed change to the definition of PAC. Secretary of State instead captures any single “person” (meaning individual, corporation, union, etc.) influencing an election in the new terms below, so long as that person is not coordinating with a campaign.
- ii. Terminology: The bill, currently, will replace the term “independent expenditure-only committees” (also known as “Super PACs”) with a new term, “public question campaign.” Secretary of State’s Office now wants to create the terms: “self-funded person acting alone on public question” or “self-funded person acting alone unaffiliated with candidate.” While these proposed terms may be more descriptive, only the term “independent expenditure-only committees” is a common term of art widely understood in the legal landscape.

c. ***Decision Point: The Committee may opt to amend the bill according to the Secretary’s request, keep the House’s proposed amendments, keep the existing statutory language ‘as is,’ or pursue another option.***

3. Appointment terms and removal of certain local officials (see last two pages of [submitted testimony](#)):

- a. Secretary of State’s Office’s request: “We feel the language in Section 31 pertaining to 17 V.S.A §§ 2651d, 2651e, and 2651f should be clearer regarding whether the legislative intent is just for the terms of the stated municipal offices to be set at one year or if the intent is also to preclude local legislative bodies from removing these appointed officials within the one-year term.”
- b. Legal Note: These sections eliminate the express requirement for just cause removal of the appointed officers. The one-year appointment term was added to provide legislative bodies with a default expiration of the appointment that would not trigger any existing procedural requirements for the removal of an officer appointed for an indefinite term. The general rule is that when statute establishes a durational term for an appointed office, the officer may only be removed for cause. There are decisions from other jurisdictions affirming this interpretation. However, most (if not all) of those other jurisdictions also have civil service statutes that cover appointed offices. Based on guidance from SCOV in *Brennan v. Colchester*, 169 Vt. 175 (Vt. 1999), it would be best to expressly state that an officer may be removed at will, if that is what the General Assembly intends. “[O]fficers ‘appointed for definite terms, are subject to removal for cause only,’ unless ‘the appointing power is authorized to remove at pleasure[.]’”

Decision Point: If the committee would like to ensure that these officers may be removed at will, then these sections should be amended to either: (1) remove the default one year term; or (2) add express language stating that these officers may be removed at will. If the committee chooses the latter, it may be beneficial to review the statutes governing other appointed officers to determine if these amendments build a presumption of removal only for just cause.

4. Voter Registration through DMV:

- a. Summary of Secretary of State's Office's Request: The Secretary of State's Office, after review by the Department of Motor Vehicles, is seeking to change an element of the current voter registration system, specifically where an applicant or renewal for a driver's license is automatically (re)registered to vote, unless the applicant opts-out.
- b. Legal Note: Secretary of State's Office's change would be so that an applicant would either have to attest to U.S. citizenship or the DMV would have to have proof of U.S. citizenship for the applicant to be automatically (re)registered to vote, unless the applicant opts out. A version of their proposal is included as an appendix for your reference (see Appendix ii).
- c. ***Decision Point:*** The Committee may opt to amend the bill according to the Secretary's request, keep the existing statutory language 'as is,' or pursue another option.

Appendix i:
Secretary of State's Office's Proposal of Amendment re Campaign Finance
(abridged)

Title 17: Elections

Chapter 61: Campaign Finance

- ***Subchapter 1: GENERAL PROVISIONS***
- **§ 2901. Definitions**

As used in this chapter:

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(10) ~~“Independent expenditure-only political committee”~~ **“Self-funded person acting alone on public question” or “self-funded person acting alone unaffiliated with candidate”** means ~~a political committee that~~ **one individual, or any corporation, labor organization, public interest group, or other entity, excluding political parties, who self-funds in an amount totaling \$1,000.00 or more and makes expenditures of \$1,000.00 or more within any two-year general election cycle for the purpose of supporting or opposing candidates, influencing an election, or advocating for or against a public question. In their capacity as a “Self-funded person acting alone on public question” or “self-funded person acting alone unaffiliated with candidate,”** ~~this person~~ **conducts** ~~their~~ **its** activities entirely independent of candidates; does not give contributions to candidates, political committees, or political parties; does not make related expenditures; and is not closely related to a political party or to a political committee that makes contributions to candidates or makes related expenditures.

(11) “Mass media activity” means a television commercial, radio commercial, ~~internet internet~~ advertisement, mass mailing, mass electronic or digital communication, literature drop, newspaper or periodical advertisement, robotic phone call, or telephone bank, that includes the name or likeness of a clearly identified candidate for office.

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(13) “Political committee” or “political action committee” means any formal or informal committee of two or more individuals or a corporation, labor organization, public interest group, or other entity, not including a political party, that accepts contributions of \$1,000.00 or more and makes expenditures of \$1,000.00 or more in any two-year general election cycle for the purpose of supporting or opposing one or more candidates, influencing an election, or advocating a position on a public question in any election, and includes ~~an independent expenditure-only political committee and~~ a legislative leadership political committee.

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- **§ 2970. Campaign reports; Political Action Committees other entities; self funded person acting alone on public questions and unaffiliated with candidate campaigns**

(a) Any formal or informal political action committee of two or more individuals or a corporation, labor organization, public interest group, or other entity, not including a political party, that makes expenditures of \$1,000.00 or more during the election cycle for the purpose of advocating a position on a public question or influencing an election in any election shall file a report of its expenditures 30 days before, 10 days before, and two weeks after the election with the Secretary of State.

(b) Any self-funded person acting alone on public question or self-funded person acting alone unaffiliated with candidate who makes expenditures of \$1,000.00 or more during the election cycle for the purpose of advocating a position on a public question or influencing an election in any election shall file a report of its expenditures 30 days before, 10 days before, and two weeks after the election with the Secretary of State.

~~(b)~~ (c) As used in this section, “election cycle” means:

(1) in the case of a public question in a general or local election, the period that begins 38 days after the general or local election prior to the one in which the public question is posed and ends 38 days after the general or local election in which the public question is posed; or

(2) in the case of a public question in a special election, the period that begins on the date the special election for the public question was ordered and ends 38 days after that special election. (Added 2013, No. 90 (Adj. Sess.), § 3, eff. Jan. 23, 2014.)

- **§ 2971. Report of mass media activities**

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(d)(1) In addition to the reporting requirements of this section, any self-funded person acting alone on public question or self-funded person acting alone unaffiliated with candidate independent expenditure-only political committee that makes an public question or unaffiliated candidate independent expenditure-only political committee expenditure for any one mass media activity totaling \$5,000.00 or more, adjusted for inflation pursuant to the Consumer Price Index as provided in section 2905 of this chapter, within 45 days before a primary, general, county, or local election shall, for each such activity and within 24 hours of the expenditure or activity, whichever occurs first, file an self-funded person acting alone on public question or self-funded person acting alone unaffiliated with candidate independent expenditure-only political committee mass media report with the Secretary of State and send a copy of the report to each candidate whose name or likeness is included in the activity without that candidate's knowledge.

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Appendix ii:
Secretary of State's Office's Proposal of Amendment re
Automatic Voter Registration

Title 17 : Elections

Chapter 043 : Qualification and Registration of Voters

Subchapter 002 : REGISTRATION OF VOTERS

(Cite as: 17 V.S.A. § 2145a)

- **§ 2145a. Registrations at the Department of Motor Vehicles**

(a) An application for, or renewal of, a motor vehicle driver's license or nondriver identification card shall serve as a simultaneous application to register to vote **if the applicant attests to U.S. citizenship or the Department has proof of U.S. citizenship** unless the applicant checks the box on the application designating that **he or she the applicant** declines to use the application as a voter registration application.

(b)(1) A motor vehicle driver's license or nondriver identification card application shall provide and request the following information and shall be in the form approved by the Secretary of State:

(A) The applicant's citizenship.

(B) The applicant's place and date of birth.

(C) The applicant's town of legal residence.

(D) The applicant's **e-911** street address or a description of the physical location of the applicant's residence. The description must contain sufficient information so that the town clerk can determine whether the applicant is a resident of the town.

(E) The voter's oath.

(F) The applicant's e-mail address **and phone number**, which shall be optional to provide.

(2) A motor vehicle driver's license or nondriver identification card application shall provide the following statements:

(A) "By signing and submitting this application, you are authorizing the Department of Motor Vehicles to transmit this application to the Secretary of State for voter registration purposes. YOU MAY DECLINE TO REGISTER. Both the office through

which you submit this application and your decision of whether or not to register will remain confidential and will be used for voter registration purposes only.”

(B) “In order to be registered to vote, you must: (1) be a U.S. citizen; (2) be a resident of Vermont; (3) have taken the voter’s oath; and (4) be 18 years of age or older. Any person meeting the requirements of (1)-(3) who will be 18 years of age on or before the date of a general election may register and vote in the primary election immediately preceding that general election. Failure to decline to register is an attestation that you meet the requirements to vote.”

(3) A motor vehicle driver’s license or nondriver identification card application shall provide the penalties provided by law for submission of a false voter registration application and shall require the signature of the applicant, under penalty of perjury.

(c) An application for voter registration under this section shall update any previous voter registration by the applicant. Any change of address form submitted to the Department of Motor Vehicles in connection with an application for a motor vehicle driver’s license shall serve to update voter registration information previously provided by the voter, unless the voter states on the form that the change of address is not for voter registration purposes.

(d)(1) The Department of Motor Vehicles shall transmit motor vehicle driver’s license and nondriver identification card applications received under this section to the Secretary of State not later than five days after the date the application was accepted by the Department, or before the date of any primary or general election, whichever is sooner.

(2) The Department of Motor Vehicles shall not transmit motor vehicle driver’s license and nondriver identification card applications when the Department does not have proof of U.S. citizenship for an applicant and the applicant has failed to attest to U.S. citizenship, or when the applicant has designated that he or she the applicant declines to be registered.

(3) The Department of Motor Vehicles shall ensure confidentiality of records as required by subdivision (b)(2)(A) of this section.

(e) The Secretary shall promptly transmit applications received under this section to the clerks of the appropriate municipalities.

(f) In transmitting applications received under this section, the Secretary shall ensure compliance with the requirements of 15 V.S.A. chapter 21, subchapter 3.

(g) If a person who is ineligible to vote becomes registered to vote pursuant to this section in the absence of a violation of subsection 2145(f) of this chapter, that person's registration shall be presumed to have been effected with official authorization and not the fault of that person.

(h) The Secretary shall take appropriate measures to educate the public about voter registration under this section.

(i) Notwithstanding the provisions of subsection (d) of this section or any other provision of law to the contrary, the Department of Motor Vehicles shall share its motor vehicle driver's license, driver privilege card, and nondriver identification card customer data with the Secretary of State's office for the Secretary's use in conducting voter registration and voter checklist maintenance activities.