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H.404

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, Sibilia 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

1 It is hereby enacted by the General Assembly of the State of Vermont:

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

3 § 2543. RETURN OF BALLOTS

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

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

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

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

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

20 (B) by mail, to the town clerk's office before the close of the polls on
21 the day of the election; and

1 (C) by hand delivery to the presiding officer at the voter's polling
2 place.

3 (2) An early voter absentee ballot returned in a manner other than those
4 set forth in subdivision (1) of this subsection shall not be counted.

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

6 § 2547. DEFECTIVE BALLOTS

7 (a) ~~If~~ Except for ballots authorized to be corrected under subsection (b) of
8 this section, if upon examination by the election officials it shall appear that
9 any of the following defects is present, either the ballot or the unopened
10 certificate envelope shall be marked "defective" and the ballot shall not be
11 counted:

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

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

14 (3) the early or absentee voter has voted in person or previously returned
15 a ballot in the same election;

16 (4) the certificate is not signed;

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

18 (6) in the case of a primary vote, the early or absentee voter has failed to
19 return the unvoted primary ballots.

20 (b)(1)(A) If the election officials determine that an early voter absentee
21 ballot would be defective under any of the provisions of subdivisions (4)–(6)

1 of subsection (a) of this section, those election officials or the town clerk
2 acting on behalf of those election officials shall make every reasonable effort
3 during normal business hours to contact the early or absentee voter in order to
4 allow the voter to correct the defect.

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

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

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

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

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

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

19 (2) placed with other such defective ballots in an envelope marked
20 “Defective Ballots - Voter Checked Off Checklist - Do Not Count”; and

1 (3) returned in that envelope to the town clerk in the manner prescribed
2 by section 2590 of this chapter.

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

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

6 § 2546. DEPOSIT OF EARLY VOTER ABSENTEE BALLOTS IN
7 BALLOT BOX OR VOTE TABULATOR

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

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

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

19 (A) If the ballot is not deemed defective, the town clerk shall check
20 the name of the early voter off the entrance checklist and record the ballot as
21 received and accepted in the online election management system and:

1 (i) place the certificate envelopes into a secure container marked
2 "checked in early voter absentee ballots" to be transported to the polling places
3 on election day; or

4 (ii) open the certificate envelope and place the voted ballot in the
5 ballot box or tabulator in accordance with the procedures contained in section
6 2546a of this title.

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

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

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

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

18 (iv) at the clerk's discretion, not later than the next business day,
19 contact the voter by phone or e-mail to inform the voter of the status of the
20 voter's ballot and the voter's opportunity to correct the error.

1 (v) Beginning five business days preceding the election, the clerk
2 is not required to send a postcard to those voters whose ballots have been
3 deemed defective. In these cases, the clerk shall make a reasonable effort to
4 provide notice to the voter using any other contact information that the clerk
5 has on file and shall record the ballot as defective in the online election
6 management system not later than 24 hours after the ballot is deemed
7 defective.

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

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

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

18 (1) ~~If the ballots are in a~~ At the direction of the presiding officer, at least
19 two election officials shall open the container marked “checked in early voter
20 absentee ballots,” one election official shall open the certificate envelopes, turn
21 the certificate side face down, and hand the envelope face down to a second

1 election official from a different political party, who shall remove the ballots
2 from the envelopes and deposit them in the ballot box or vote tabulator.

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

13 (3)(A) If the early voter is a first-time voter who registered by mail or
14 online, two election officials from different political parties shall determine
15 whether the identification required under subdivision 2563(1) of this title has
16 been submitted by the voter. Upon ascertaining that the proper identification
17 has been submitted by the voter, the election officials shall mark the checklist,
18 open the certificate envelope, turn the certificate side face down, and hand the
19 envelope face down to a third election official who shall remove the ballots
20 from the envelopes and deposit the ballot in the ballot box or vote tabulator.

1 (B) If the proper identification has not been submitted, the ballot
2 shall be treated as a provisional ballot, as provided in subchapter 6A of this
3 chapter.

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

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

7 § 2546a. ~~DAY PRECEDING ELECTION;~~ DEPOSIT OF EARLY VOTER
8 ABSENTEE BALLOTS IN VOTE TABULATOR

9 (a) Generally. Notwithstanding any provision of law to the contrary, ~~if a~~
10 ~~town will be using a vote tabulator for the registering and counting of votes in~~
11 ~~the upcoming election and will check in early voter absentee ballots in~~
12 ~~accordance with subsection 2546(a) of this chapter for that election,~~ the board
13 of civil authority may vote to permit elections officials to deposit ~~those~~ early
14 voter absentee ballots that have been processed in accordance with subsection
15 2546(a) of this title and have not been deemed defective into the vote tabulator
16 in accordance with the provisions of this section. This depositing of these
17 ballots shall take place at the town clerk's office ~~on the day~~ at any time during
18 the 30 days preceding the election.

19 (b) Notice.

20 ~~(4)~~ If a board of civil authority votes to deposit ballots as described in
21 subsection (a) of this section, ~~the town clerk shall post notice that ballots will~~

1 ~~be so deposited in at least two public places in the municipality and in or near~~
2 ~~the town clerk's office not less than 30 nor more than 40 days before the~~
3 ~~election. If a municipality has more than one polling place and the polling~~
4 ~~places are not all in the same building, the notice shall be posted in at least two~~
5 ~~public places within each voting district and in or near the town clerk's office.~~
6 the process shall be conducted during normal business hours if practicable or,
7 if conducting the process at a time other than normal business hours, notice of
8 the date(s), time(s), and location of the processing shall be posted at the clerk's
9 office and two other public places at least three days in advance.

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

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

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

20 ~~(d) Count and inspection.~~

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

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

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

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

12 ~~(e) Processing.~~

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

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

20 ~~(3) At the end of the processing, the town clerk shall verify that the vote~~
21 ~~tabulator’s memory card is locked in place and shall sign a statement verifying~~

1 ~~how many early voter absentee ballots were counted by the vote tabulator and~~
2 ~~that the memory card is so locked. The town clerk shall compare the vote~~
3 ~~tabulator's number of counted ballots to the original count of those ballots~~
4 ~~described in subdivision (d)(1) of this section.~~

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

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

11 (d) Processing.

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

15 (2) If using a tabulator:

16 (A) On a form provided by the Secretary of State's office, the seal
17 number on the tabulator memory card must be recorded when the tabulator is
18 removed from the vault and the election official shall affirm that the seal
19 number on the memory card is the same seal number as was recorded
20 following the previous time that ballots were processed through the tabulator.

1 The election official shall also confirm that the lock on the ballot bin has not
2 been tampered with.

3 (B) The tabulator shall be plugged in, turned on, and the election
4 official shall record the number of ballots that the tabulator indicates have been
5 processed and confirm that that number matches the number of ballots
6 recorded when the tabulator was turned off following the last time ballots were
7 processed.

8 (C) When all ballots have been processed for the day, the election
9 official shall record the number of ballots that the tabulator indicates have been
10 counted, shall verify that the memory card is sealed in place, and shall record
11 the seal number.

12 (D) The tabulator shall be turned off, unplugged, and returned to the
13 vault for storage by two election officials.

14 (E) The election officials shall otherwise comply with all provisions
15 of this title relating to the security of the vote tabulator.

16 (3) After confirming that the voter's name has been marked off the
17 checklist in accordance with subdivision 2546(a)(2)(A) of this subchapter, one
18 election official shall open the certificate envelope, turn the certificate side
19 face down, and hand the envelope face down to the second election official,
20 who shall remove the ballots from the envelopes and deposit them in the secure
21 ballot box or vote tabulator.

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

6 (e) Election day.

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

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

17 ~~(h)~~(f) Rules. The Secretary of State may adopt rules to implement the
18 provisions of this section.

1 Sec. 5. 17 V.S.A. § 2546b is amended to read:

2 § 2546b. EARLY VOTING IN TOWN CLERK'S OFFICE; DEPOSIT INTO
3 VOTE TABULATOR

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

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

12 (b)(1) During business hours in the town clerk's office, the ballot box or
13 vote tabulator and ballot bin shall be in a secured area accessible only to
14 election officials and voters. The vote tabulator unit shall be secured with an
15 identifiable seal and the ballot box containing voted ballots shall remain locked
16 at all times and secured with an identifiable seal. Neither seal shall be broken
17 prior to the time of closing the polls on election day.

18 (2) Once early voting has commenced in the town clerk's office, the
19 town clerk or designee shall certify each day in a record prepared for this
20 purpose that the seals on the vote tabulator and ballot box are intact.

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

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

8 (c) On the day of the election:

9 (1) The ballot box or sealed vote tabulator and ~~sealed ballot boxes~~ ballot
10 bin shall be transferred to the polling place on election day by two election
11 officials and shall not be opened until the polls have closed on election day.

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

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

1 Sec. 6. EFFECTIVE DATE

2 This act shall take effect on July 1, 2021.