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JOINT STANDING COMMITTEE ON VETERANS AND LEGAL AFFAIRS

LD 1026 "An Act To Require Election Transparency"
Testimony Provided by Julie L. Flynn, Deputy Secretary of State
March 18, 2019

Senator Luchini, Representative Schneck and Members of the Committee:

The Secretary of State opposes this legislation, which would require the Secretary of State to implement several new programs and procedures (either at the state or the municipal level) and to conduct a study and pilot of post-election audits and recounts. What is the existing problem in Maine that this bill is attempting to solve? Implementing this bill will require a substantial investment of public resources, and that is difficult to justify if those resources are not directed towards solving a clearly identified problem. While we understand the proponents' stated goal of increasing transparency in the election process, we are not convinced that these specific programs will achieve that goal, or that they should garner the additional resources that would be necessary for implementation.

Section 1 of the bill would require the Elections Division ("Division") to implement several election procedures aimed at increasing the transparency of the state election process. The following are our thoughts on the 5 requirements contained in section 1 of the bill.

Develop and publish, by December 2, 2019 (deadline found in Section 2 of the bill), a voter's guide to election procedures, and to update it annually thereafter.

- Election procedures are spelled out quite clearly in the election laws; everything election officials do is a result of a federal or state statutory provision, our interpretation of it, and our judgment about the best process or procedure to implement the law.
- The Division's website already contains information and guides to specific voter programs, including voter registration, absentee voting, accessible voting and resources for how UOCAVA voters (i.e., uniformed service and overseas voters) register to vote and obtain and return a voted ballot. These provide specific information that voters need in order to exercise their right to vote, whereas the proposed guide would describe general procedures about how elections are conducted. Producing such a guide would take a considerable amount of staff time, and we doubt whether voters would ever read it or find it particularly useful to them.
- While we don't specifically object to producing a guide to election procedures, we don't believe this should be a priority over other projects that already are planned for 2019 – 2020.

Implement 2 new self-survey forms for all municipalities to complete and submit after each election:

- **Checklist of election procedures for the voting place.** The Division already has 20 filing forms/procedures that municipalities must submit to us for each election. *See attached "Summary of Municipal Election Filings".* Some of these required filings document the chain-of-custody for ballots (2, 6 and 9) while others are used to corroborate that voting systems are tested prior to each election (3, 7 and 8). These sets of documents provide verification of the security and accuracy of the ballots and results.
- We do not think the new checklist prescribed on lines 16 and 17 of page 1 adds any value to the election process; it is simply a "make work" procedure. Staff already spends a significant amount of time assisting municipalities with completing the existing forms accurately and, as the chart shows, conducting many follow up activities with 100 to 150 towns that are delinquent for any given filing. Having to instruct and guide local officials in filling out a new checklist will simply require more staff time with no tangible benefit.
- **Ballot reconciliation form.** On occasion, we have used a ballot reconciliation process during a recount to determine whether all ballots are accounted for, but this is usually when it appears that the wrong district ballots were issued to some number of voters *and could affect the outcome of the election.* We do not think it is necessary to require a ballot reconciliation process by local officials at every election. And adding another procedure that must be completed during the close of the polls -- by requiring the local election officials at the polls to determine the number of spoiled, challenged and unused ballots before the materials are sealed and returned to the clerk -- may simply delay the completion of the election night results tally.
- The Division staff will not have any way to audit these filings for accuracy, as all the source documents will be sealed at the town level. Checklists filed with the Division that indicate a large number of unaccounted for ballots may simply be the result of mistakes in completing the form or of math errors. The posting or reporting of such forms could decrease public confidence in the process, even when there is no issue in reality.
- The Division will certainly have to spend a lot of time working with towns to ensure that these forms are completed and timely submitted, similar to what we have to do to audit the Voter Participation History after each election. For the November 2018 General Election, it took 3 Election Coordinators plus one management staff a total of 1,167 hours from mid-December through the end of February to audit all of the Voter Participation History filings.
- If the Committee wishes to move forward with this section of the bill, we ask that you amend the wording on page 1, lines 21 and 22, to change the signature requirement for these forms to read "...signed by the municipal clerk or warden and one other election official." (Underlined text to be added.) In some voting places, the clerk is not present at the end of election day to complete these forms, but the warden would be.

Develop an election complaint process and keep a record of and make public each complaint.

- The Division already has an informal complaint process. We answer calls from the general public regarding statewide election laws and procedures throughout the year, and often field and log hundreds of calls on election day. These calls rarely raise issues that

we would consider a violation of law or even an actionable complaint. However, we would prefer to receive these informal calls and complaints during election day so that they can be addressed immediately.

- To require a formal complaint process involving written filings could discourage some citizens from raising concerns. Moreover, some voters might be reluctant to file a complaint if their name is going to be posted publicly on the web.

Maintain automatic voter registration information and contract with a nonprofit corporation of member states to comply with this requirement. (Section 4 of the bill further requires the Secretary of State to enter into a membership agreement with the Electronic Registration Information Center, Inc., (aka “ERIC”) on behalf of the state, to fulfill this requirement.)

- The requirement in this section is particularly concerning, as it involves telling us **how** to do a particular job that we already are doing in a different way. It also prescribes a specific “nonprofit vendor” that we must work with to accomplish the job. Choosing a contractor is typically an executive not a legislative function.
- Joining the ERIC Consortium requires us to agree to share our voter registration and motor vehicle data every two months, and to complete certain mailings to voters within specified time periods. Of course, this entails some significant expenditures. ERIC charges a one-time membership fee of \$25,000 to join as well as annual dues of \$25,000 to \$50,000 a year. Postage for the initial mailing to eligible but unregistered voters is estimated at \$80,000, and there would be additional costs to print and have the mailing managed by Division staff or a vendor. Postage for annual maintenance mailings would be in the range of \$50,000 to \$100,000.

Submit a report to the Legislature within 12 months after a general election, which includes a summary of the activities required by this bill.

- This section as drafted prescribes a pretty far-reaching reporting requirement – especially as it encompasses “all elections since the prior general election”. The requirement in paragraph D, to create a summary of any recounts conducted, would be quite time consuming as well.
- We believe this reporting requirement, along with the previous requirement to maintain voter registration via a membership in the ERIC program, would necessitate an ongoing and significant level of effort, requiring the addition of 4 Election Coordinators and an Information Services Systems Analyst, at a cost of over \$250,000 in annual salaries plus benefits.
- If the Committee decides to proceed this reporting requirement, we ask that you amend the language about the report’s filing date on page 1 line 35 to replace “Within 12 months after a general election” with “on December 15th of each odd-numbered year”, so there is a specified date for filing the report.
- If the Committee wishes to require the election complaint procedure as proposed in this bill, we ask that you eliminate the reporting requirement in paragraph B, since the election complaints would already be posted on the Secretary of State’s website.
- The information requested in paragraph C already is included in the *Report on the Administration of the Central Voter Registration System* that we submit to this Committee on January 15th each year, so we think it should be removed from this report.

If the Committee should decide to proceed with this bill, we also request that you add a delayed effective date of January 1, 2020 for section 1 of the bill, so that the new procedures and forms will be implemented for the 2020 elections, rather than the 2019 referendum election.

Section 3 of the bill requires the Secretary of State to study recounts and audits, develop a pilot program for auditing plurality and ranked-choice elections, and submit a report based on the study to the 131st Legislature by December 2, 2021.

- As we have previously testified on proposals to implement random audits of election results, we do not believe that these are necessary or even effective in convincing the general populace that Maine elections have integrity. Since recounts of close races have been conducted for most general elections, we have ample data to show that there are no major issues with the ballot counts or performance of the tabulators. No recounts have overturned the results of an election since deploying the DS200 scanners prior to the November 2012 election. Members of the public participate in hand-counting ballots at these recounts and the before-and-after results are reported at conclusion of the recounts.
- Recounts of close elections ensure that we validate the outcome of the election, which could change if there are significant errors in the original count. We do not see the value in expending time and effort to study a seemingly complex statistical sampling method of conducting audits of all election results, especially for races where it is extremely unlikely to change the outcome and there is no data to show a problem exists.
- As we detailed on the activities summary for Elections as part of our Departmental overview for this Committee, we have focused the Secretary of State's resources on providing security and accuracy in the election process by maintaining control of the ballot layout, election memory device coding and testing of the ballots and media at the state level before each election. The Division spent 1,113 hours spent on these activities prior to the November 2018 General Election, including 463 hours by the Assistant Director of Elections between early August and election day. These existing procedures and quality control measures assure the integrity of our elections and should give Maine voters confidence.

For all these reasons, we ask that you vote Ought Not to Pass on this bill. I will be happy to answer any questions you may have, either now or at the work session.

Summary of Municipal Election Filings

Prepared by the Office of the Secretary of State

Election administration is driven by statute, requiring adherence to filing deadlines by municipal officials. The Secretary of State provides official election mailings, detailed calendars and checklists to assist municipalities with meeting statutory obligations outlined in Title 21-A. Several administrative forms are utilized to compile necessary information prior to each election, including municipal supply request forms for statewide procurement, tabulator programming requests, and notifications of scheduled early processing of absentee ballots.

The attached summary, *Municipal Election Filings*, provides a listing of the required municipal filings and forms for the November 6, 2018 General and Referendum Election. The documents are provided in chronological submission order beginning four months prior to the election. The applicable Title 21-A statutory reference is included for each form. The “Admin” designation signifies that the document is needed to complete an administrative task associated with the statute listed, but the form itself is not specifically outlined in the law.

The majority of filings are required by all municipalities, with the exception of the forms applicable only to tabulator municipalities or those related to activities that do not apply to all towns, such as early absentee processing or emptying a full ballot box. Filings are submitted primarily via email, fax or mail, with certain certifications completed electronically through the Central Voter Registration (CVR) system.

Frequently, required filings are not submitted to the Secretary of State by the deadline. Over recent years, approximately 25% - 30% of documents are not received on time. In response, staff resources must be assigned to contact delinquent municipalities by fax blast, phone, and email to obtain missing information, often requiring multiple communications. When time permits, staff proactively contact municipal officials with reminders, either by phone, email or fax prior to the deadline date, however, more pressing election preparation tasks usually take priority over these advance contacts.

The *Municipal Election Filings* summary illustrates the following:

- Up to 20 filings and forms submitted by municipalities are reviewed and tracked by the Secretary of State for every state election.
- All documents specifically outlined by Title 21-A for election compliance by municipalities are monitored by the Secretary of State.
- While the majority of municipalities are submitting forms on time, the 25% - 30% of delinquent filers (i.e. 125 – 130 towns) require significant staff hours to make repeated contacts to secure delivery of late materials.
- Extensive contacts were required by six staff members to secure **election results** by the 3rd business day after the election. (For prior elections, we experienced the same delinquency rate as other filings, which delayed processing of the election tabulation, necessitating our change in procedure in 2018 to begin outreach before the deadline.)
- Substantial effort was required to obtain, review and reconcile voter participation history by the deadline (4 staff spent 1167 hours over a 10 week period).
- The average standard delinquency rate for municipal filings with no reminders was 27%.
- Anecdotally, smaller towns are more frequently delinquent filers and are much more difficult to contact due to limited municipal hours, lack of reliable email or cell phone service, and turnover.

Municipal Election Filings - November 6, 2018 General Election

	Filing	Purpose	Title 21-A	Deadline	Late
1	Supply Order Form	Order statewide quantities of election supplies	Admin §651, §752	4 months before election	20%
2	Blank Absentee Receipt	Confirm receipt of blank absentee ballots	§752	3 months before election	22%
3	DS200 Coding Form	Programming requests for DS200	§854	3 months before election	15%
4	Voting Place Report	Provides location of voting place, poll opening time, number of voting booths and contact information for RCV retrieval	626-A	60 days before election	7%
5	Notice of Early Processing	Notification of early processing of absentee ballots prior to Election Day	§760-B(2)	60 days before election	N/A
6	Absentee Ballot Receipt	Confirm receipt of absentee ballots	§606(3)	30 days before election	30%
7	DS200 Testing Confirmation	Confirm testing of DS200 tabulator	§854	2 weeks before election	31%
8	ExpressVote AVS Testing Confirmation	Confirm testing of accessible voting system	812-A	2 weeks before election	32%
9	Official Ballot Receipt	Confirm receipt of Official Election Day ballots	§606(3)	10 days before election	N/A
10	Certified Return of Votes Cast	Submission of election results	§711(3)	3 business days after election	0%
11	Warden's Return of Votes Cast	Submission of election results as recorded by warden	§711	3 business days after election	0%
12	Certificate of Sealed Ballot Container	Record of tamper-proof container lock and seal	Admin §760-B(6), §699	3 business days after election	0%
13	Log of Spoiled Ballots	Record of all spoiled ballots	Admin §693	3 business days after election	14%
14	Warden's Log of Opening the Ballot Box	Record of every instance ballot box was opened during Election	§651	3 business days after election	0%
15	Log of Early Processing	Record of early processing and security of ballots	§760-B	3 business days after election	0%
16	Municipal Certification - Absentee Data Processing Completed	Verification that absentee data was updated in CVR by statutory deadline	§753-B (6)(E)	5 business days after election	15%
17	Municipal Certification - Election Day Registrations/Changes Processing Completed	Verification that Election Day registrations/changes were updated in CVR by statutory deadline	§721	15 business days after election	16%
18	EAC Clerk Survey (EAVS biennial federal report)	Reports challenged ballots and poll worker information for EAVS (Election Administration and Voting Survey)	N/A	3 weeks after election	25%
19	Voter Participation History Statement of Completion	Verification that voter participation history was completed and reconciled to the total number of ballots cast	Admin §721	45 business days after election	0%
20	Municipal Certification - Voter History Processing Completed	Verification that voter participation history was updated in CVR by statutory deadline	§721	45 business days after election	8%

Ballot Layout, Coding & Testing Hours

General and Referendum Election, November 6, 2018

Prepared by the Office of the Secretary of State

8/02/18 – 8/29/18	18 days	Process Coding Requests and Media Assistant Director Staff (2) <i>Includes 1 Saturday</i>	26 hours 128 hours
8/17/18 – 9/10/18	16 days	Ballot Layout Assistant Director	120 hours
9/04/18 – 9/07/18	4 days	Proofreading ballots Director Staff (3)	16 hours 48 hours
9/11/18 – 9/19/18	7 days	Accessible Voting System – Screens & Audio Assistant Director Staff (1)	42 hours 20 hours
9/20/18 – 10/17/18	20 days	Code and Burn Equipment Media Assistant Director Staff (1) <i>Includes 1 Holiday and 1 Saturday</i>	130 hours 70 hours
10/08/18 – 10/20/18	12 days	Test Media, DS850 & RCV – Ship Media Assistant Director Staff (6) <i>Includes 1 Saturday</i>	70 hours 320 hours
10/22/18 – 11/02/18	10 days	Assist Towns with Testing & Resolve Issues Assistant Director Staff (1)	60 hours 40 hours
11/03/18 – 11/05/18	2 days	Assist Towns with Early Absentee Processing Assistant Director Staff (1) <i>Includes 1 Saturday</i>	15 hours 8 hours
8/02/18 – 11/05/18		Total Management Hours Total Staff Hours Total Project Hours	463 hours <u>650 hours</u> 1,113 hours

Voter Participation Review and Reconciliation Hours

General and Referendum Election, November 6, 2018

Prepared by the Office of the Secretary of State

12/17/18 – 2/28/19

Review and Reconciliation of Voter Participation History

CVR Manager	300 hours
Staff (3)	<u>867 hours</u>
Total Project Hours	1,167 hours

Process included:

- Responding to initial calls from municipalities
- Intake, review and tracking of *Statement of Completion* forms
- Inspection of voter records (across multiple towns)
- Follow-up contacts with municipal officials
- Intake of correction request forms
- Final review and sign-off of reconciled *Statement of Completion* forms