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JOINT STANDING COMMITTEE ON VETERANS AND LEGAL AFFAIRS

LD 121 “An Act to Require Photographic Identification to Vote”

Testimony Provided by Julie L. Flynn, Deputy Secretary of State

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Senator Mason, Representative Luchini and Members of the Committee:

The Secretary of State opposes this legislation, which would require each person who votes at the voting place to show an official, valid (unexpired) photographic identification document issued by a state or federal government entity, or a Maine college or university. Voters who are unable to produce a photo ID, or obtain an election official affidavit confirming their identity (an option only available until November 9, 2018) would have to vote a “provisional ballot” that would not be counted unless the voter provided a photo ID to the clerk or registrar either before the polls close on election day or within 5 business days after election day.

Although not stated in the bill, the only applicable policy rationale for requiring photo ID at the polls is to prevent the crime of “voter impersonation”, which means that a person has voted using the name of another person. In the 22 years that I have worked for the Secretary of State I am unaware of any evidence being presented to the State of voter impersonation at the polls. In the past 10 years, the Attorney General has prosecuted and obtained convictions in 4 cases of “dual voting”, where the same person voted twice in the same election. In 3 instances, the person registered and voted in two different towns. In the fourth instance, the voter obtained an absentee ballot both for himself and his son and voted both ballots. So, in the latter instance, voter impersonation was involved, but with absentee ballots rather than voting at the polls, and it was detected and investigated due to the signatures on both absentee envelopes appearing the same. None of these 4 situations would have been prevented by requiring a voter to show ID at the voting place.

In January of 2012, I prepared a report to the Secretary of State on our efforts to investigate suspected dual voting during the 2008 and 2009 elections; the report was shared with the Committee in 2012. Of the initial 240 pairs/groups of suspected dual voting, 229 of them were determined through administrative review to reflect only apparent (not actual) dual voting as the result of human error by election officials. Of the remaining 11 cases referred to the Attorney General for investigation, only 2 resulted in prosecution after further investigation; while the other 9 cases reflected apparent (not actual) dual voting as the result of human error. Thus, we believe this bill presents a solution for which there is no documented problem.

I will note that, under current law, voters who register for the first time in Maine, whether before or on Election Day, have to show proof of identity and residency to the registrar or they must vote a challenged ballot. The challenged ballot process would still be needed under this legislation, although the numbers of voters subject to a challenged ballot are small – only 193 challenges were issued in the November 2016 election. Moreover, all challenged ballots are counted on Election Day, so no voters are

disenfranchised, and the registrar must follow up to get the proof of identity and residency after the election or cancel the voters' records after due process.

Implementing the voter ID requirement would create significant administrative tasks and costs for the Bureau of Motor Vehicles and the Elections Division of the Secretary of State, as well as for the election officials of the approximately 500 municipalities that conduct state and local elections.

The Bureau of Motor Vehicles (BMV) would incur the cost of materials for producing the free Maine non-driver identification card for any registered voter or prospective registrant who does not have a photo ID. As of February 1, 2017, there were 1,055,844 registered voters in Active status. Of those, there were 202,614 individuals who could not be matched with a Maine driver license or state ID credential, and thus would require some other form of photographic identification if they wished to vote at the polls. While some of these voters may have a passport, federal photo ID or college ID, there is no way to know how many of these voters do not have a photo ID and would need to obtain the free photo identification document described in section 4 of this bill.

The cost to the BMV to produce a credential for eligible persons who do not have another form of acceptable photographic identification to verify identity for the purpose of voting is \$2.87. Thus, it would cost \$581,500 to provide these cards to 202,614 potential voters. Additionally, the state identification application would need to be modified by adding an attestation statement that the ID is only being obtained for voting purposes. The cost for this revision is \$.059 for each double-sided sheet, or about \$12,000. These costs are only to cover the materials, and do not take into account the increased work load on the BMV main and branch offices to administer the application process and produce the non-driver ID cards for up to 202,614 individuals. There certainly could be a large number of voters trying to obtain the ID cards in the 5 business days following an election after having to vote a provisional ballot.

Once the non-driver ID is issued, however, there would be no way to ensure that it was not used for purposes other than voting. The only way to do this would be to create and issue a different form of non-driver identification card that includes wording such as "For Voting Purposes Only". The BMV would likely incur additional costs for set-up and production of a new ID form. If this is the direction that the Legislature would like to take, then we would obtain an estimate from the vendor.

The Elections Division would experience additional costs for designing, printing and providing to each municipality the provisional ballot envelopes, provisional ballot affidavits, notices to voters, election official affidavits (through the November 2018 election only) and provisional ballot logs for each election following passage of this bill. We estimate that the printing costs alone would add \$40,000 to the election printing budget each year. Additionally, we would have to develop and deliver new training materials to each municipality to provide for a uniform set of procedures for election officials for issuing, verifying and tracking provisional ballots, as well as posters on the ID requirements to post at each voting place for voter information. The costs of producing these materials would be part of the annual budget for providing election instructions and training materials, and is not expected to result in additional costs.

Based on the experience of other states that have implemented a voter ID requirement, Maine would also incur the costs of designing and implementing a voter education and outreach program to inform voters of the new law as well as how to obtain the free voter ID card if needed. The National Conference of State Legislatures (NCSL) published a study in 2014 of the costs for implementing a voter ID law and indicated that the voter outreach costs ranged from \$40,000 in Mississippi for TV ads (out of a total of \$220,000 appropriated for implementation) to \$600,000 in Indiana during the implementation year.

States also have spent millions of dollars on litigation costs as voter ID laws have been challenged in the courts. Since the court decisions have been based on the specific requirements in each state's laws and specific facts about their impact, it is hard to predict how this particular law would fare if it were challenged.

The municipal election officials at each voting place would be on the front lines of implementing this law, and their costs are more difficult to estimate. Certainly, the time for each voter to check in at the Incoming Voter List (IVL) and obtain a ballot would increase by the amount of time it would take for the voter to present the ID and the election official to look at it. While we don't have any scientific data on check-in times in Maine, on average the current process should only take about 1-2 minutes. The length of waiting lines -- currently relatively short in Maine -- would increase, unless municipalities hired additional election officials. When voters do not have the requisite ID, but the voter is known to an election official, it would take a few minutes to complete the election official affidavit so that the voter could vote a regular ballot. We also have concerns about the fairness of limiting the affidavit process to election officials. Voters in small towns and voters who have lived in the same town for many years would likely be known to an election official, but that would be less true for younger voters and voters in larger towns and cities.

If the voter is not known to an election official, the process for administering the provisional ballot would likely take several minutes, and towns would have to hire extra election officials to handle that process efficiently. There would be additional time for voters who vote the provisional ballot to bring in their ID either by 8 p.m. on Election Day or by the close of business on the 5th business day after the election. The municipal clerk or registrar would have to retrieve the provisional ballot envelope for those voters and process and count the ballots for voters who were able to produce the ID after Election Day. This would take an unknown amount of time during a period when clerks already are under a statutory obligation to submit their election returns to the Secretary of State. The current wording of this bill allows voters to produce the ID within 5 business days after the election; however, the results are required to be reported by the 3rd business day after the election. (This discrepancy should be corrected if the bill is to go forward.) If requiring provisional ballots necessitates the expenditure of additional funds by municipalities, then an argument may be made that this constitutes an unfunded mandate.

Despite the best efforts of state and local officials, there would likely be some number of eligible voters who would not be able to produce a photo identification document by the deadline, and whose ballots would not be cast or counted for an election.

Finally, when a similar bill was presented to the 125th Legislature, the Legislature amended the bill to direct the Secretary of State to study election procedures and report the findings to the 126th Legislature by February 1, 2013. Then Secretary of State Charlie Summers convened a bi-partisan elections commission to undertake this study during 2012. The Commission completed its work and issued a report on January 28, 2013, which Secretary of State Dunlap transmitted to this Committee on February 1, 2013. I have attached a copy of this report and Secretary Dunlap's transmittal letter for the current Committee's reference. Voter ID is addressed in Section I of the report, which includes an analysis of the "pros" and "cons" of implementing such a requirement, followed by the Commission's conclusion, by a 4 to 1 vote, that "the negative aspects of a Voter ID law outweigh its potential benefits and [the Commission] recommends that a Voter ID system not be pursued in Maine".

In summary, because of the lack of documented instances of voter impersonation in Maine, and the significant administrative burdens and costs on state and local governments of implementing the voter ID and provisional ballot procedures, as well as the likelihood of disenfranchising an unknown number of eligible voters, we respectfully request that the Committee vote "Ought Not to Pass" on LD 121.

I will be happy to answer any questions you may have, either now or at the work session.