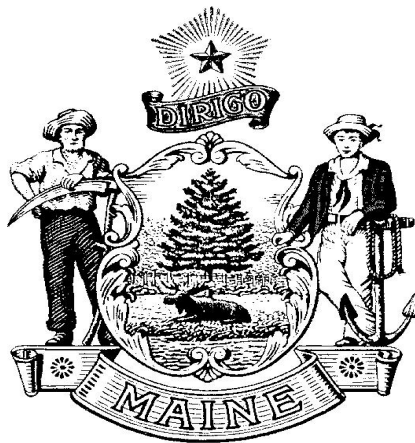


Report and Pilot Program for Early Voting

*Prepared for the 123rd Maine Legislature
Pursuant to the Resolves of 2005, Chapter 70*

April 1, 2007



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I. EXECUTIVE SUMMARY

The 122nd Maine Legislature, in the Resolves of 2005, c. 70, directed the Secretary of State to design a pilot program for early voting. In order to thoroughly analyze the process of early voting and identify the factors to be considered when conducting a pilot program in Maine, the Secretary of State established the Early Voting Study Group.

Municipal clerks, as well as staff from the Offices of the Secretary of State, the Attorney General and the Legal and Veterans Affairs Committee participated in the Study Group, which met five times between January and March of 2007. Participants collected and analyzed data and discussed issues pertaining to early voting, in addition to concerns that have developed with Maine's current absentee voting process. The steps involved with processing absentee ballots have led municipal clerks to request changes to the absentee ballot procedures and to support a true system of early voting. At the first meeting of the study group, members identified the following goals for designing an early voting pilot program and any changes that are made to the current absentee voting process:

- 1) To enhance privacy and confidentiality;
- 2) To relieve administrative overhead;
- 3) To maintain the integrity of the voting process; and
- 4) To maintain or enhance access to the voting process.

Input and data was collected on both absentee voting and early voting from municipal clerks in Maine and from other states. Legal issues that have arisen in other states were also investigated. The information gathered shows a significant increase in the use of absentee voting in Maine since 2002, with over 40% of absentee voters casting their ballots in the municipal clerk's office. Such trends seem to indicate that there is voter interest in Maine for an early voting program. Study Group members believe that something must be done to relieve the administrative burden on municipal election officials, while at the same time preserving or enhancing opportunities for voters to cast their ballots. In considering any new voting process, the goal of the Secretary of State's Office is always to promote voter turnout and make voting as accessible as possible, while safeguarding the integrity of the election process.

The Study Group defined "early voting" to be a time period before an election during which voters would have the opportunity to cast a ballot at a designated voting place within their municipality, in the same manner as on Election Day. Supporting reasons for an early voting program include giving voters additional assurance that their ballots have actually been cast, providing voters a more convenient timeframe for voting, and reducing the administrative burden on municipal clerks while they are preparing for Election Day.

Study Group members identified several issues that need to be considered in order to establish an early voting program in Maine. These issues include:

- Safeguarding the integrity of the election;
- Security of the voted ballots, voting machines, and ballot boxes;
- Confidentiality of election results;
- Timeframes for early voting;
- Early voting as a supplement to or replacement for in-person absentee voting.

Additionally, there are concerns related to polling places, voting machines, staffing, and election management that would need to be addressed if early voting were to be implemented.

Recently, Maine instituted changes in the election process that are federally mandated by the Help America Vote Act of 2002 (HAVA). These include the Central Voter Registration system (CVR) and the Accessible Voting System (AVS). Adoption of early voting in Maine would be impacted by the existing requirements of HAVA and would need to be addressed to include the CVR and AVS initiatives.

The Study Group made the following recommendations regarding changes to current absentee voting processes and early voting:

1. Establish cutoff dates for in-person absentee voting and issuing absentee ballots;
2. Allow early processing of absentee ballots (municipal option);
3. Conduct a pilot program for early voting during the November 6, 2007, Referendum election; and
4. Secretary of State to report to the Legislature by January 15, 2008, about the pilot program.

In making these recommendations, the Early Voting Study Group has met the charge of the Legislature in the Resolves of 2005, c. 70, as well as accomplishing the goals the Study Group established at the start of this process.

II. INTRODUCTION

This report is being submitted to the Joint Standing Committee on Legal and Veterans Affairs in the 123rd Maine Legislature, pursuant to the Resolves of 2005, c. 70, entitled “*Resolve, Directing the Secretary of State to Design a Pilot Program for Early Voting*” (see *Appendix A for a copy of the Resolve*).

The Resolve was introduced to the First Regular Session of the 122nd Legislature as L.D. 1173, and was presented in response to concerns raised by clerks from several municipalities about the increased volume of in-person and other absentee voting that occurred during the 2004 Presidential Election. The original proposal directed the Secretary of State to design a process that would allow municipalities to permit voting at a polling place up to 2 weeks prior to Election Day, and to submit a report to the Joint Standing Committee on Legal and Veterans Affairs by December 1, 2005.

The Secretary of State’s office was opposed to the original Resolve, primarily due to the pending deadlines for implementation of the Central Voter Registration system (CVR) and Accessible Voting System (AVS) required by the federal Help America Vote Act of 2002 (HAVA). The office testified that a prerequisite to early voting would certainly be the full implementation of the CVR, a significant component of which is the absentee ballot processing and tracking module. Prior to the implementation of CVR, most municipalities did not have an electronic system that facilitated tracking and listing of absentee ballots issued. The Secretary of State’s Office also stated that the CVR would ensure that all municipalities could handle an early voting process in the same manner.

Additionally, the Secretary of State’s office testified that before early voting or any other major voting process change is enacted, the office would need to design appropriate procedures that ensure voters only have the opportunity to cast one ballot; ensure that the public has an opportunity to observe the process and challenge early ballots, the same as they would absentee or Election Day ballots; and ensure that cast ballots are safeguarded until they are counted. Finally, the office recommended that there should be a pilot program conducted in at least one municipality to verify that all potential issues have been addressed, before the Legislature considered adopting the process statewide.

The Legislature acknowledged the concerns of the Secretary of State and amended the Resolve to require the Secretary of State to study early voting, design a pilot program to be conducted at the November 2008 general election and report back to the Joint Standing Committee on Legal and Veterans Affairs during the First Regular Session of the 123rd Legislature. Pursuant to the Resolve, the pilot program must be conducted in one municipality, although the Secretary of State may select additional municipalities that are willing to participate in the pilot program. The Resolve further directs the Secretary of State to consult with other states that have early voting in order to use best practices of those states. Further, as required by the Resolve, this report details the plan for conducting a pilot program for early voting and outlines issues of concern for the Legislature to consider.

Formation of Study Group

In order to thoroughly analyze the process of early voting and identify the factors that needed to be considered to conduct an early voting pilot program in Maine, the Secretary of State established the Early Voting Study Group, inviting municipal clerks, as well as Legislative staff and staff from the Attorney General's office, to participate (*see Appendix B for membership*). During five meetings, the Study Group considered issues pertinent to a pilot program, as well as long-term solutions to both the absentee voting process in Maine and the introduction of an early voting program after the pilot program has taken place, should the Legislature deem it appropriate. Members of the Study Group agreed that in developing these programs, it was important to:

- 1) Assess how the broader group of municipalities would be impacted by them;
- 2) Assure that federal requirements under HAVA are met, particularly with regard to the Central Voter Registration system (CVR) and the Accessible Voting System (AVS); and
- 3) Avoid developing a system that would be more difficult for voters to use.

Study Group Meetings

The Study Group met five times: January 25, 2007; February 8, 2007; March 8, 2007; March 20, 2007; and March 29, 2007. Some members who were not able to travel to Augusta for the meetings participated by conference call.

At the *first meeting*, members reviewed the Resolve, discussed the scope and goals of the study, and identified issues for discussion of a pilot program (what early voting is; why it would be appropriate; when and where early voting would take place; how early voting would be conducted; and who would manage it). The following goals were identified:

- 5) To enhance privacy and confidentiality;
- 6) To relieve administrative overhead;
- 7) To maintain the integrity of the voting process; and
- 8) To maintain or enhance access to the voting process.

The Secretary of State staff agreed to contact other states regarding their early voting programs; municipal clerks agreed to get input from other municipal clerks; and Phyllis Gardiner, Assistant Attorney General, agreed to contact other states regarding legal issues associated with early voting.

Information and data on early voting that was obtained following the first meeting was shared and analyzed at the *second meeting*. The following written reports were distributed:

- 1) Results to date of an early voting/absentee voting survey to Municipal Clerks;

- 2) Information on early voting systems in other states from the National Conference of State Legislatures and the National Association of Secretaries of State; and
- 3) Examples of other states' statutes on early voting.

In addition to reviewing this information, members discussed several early voting issues identified at the first meeting, including limited staff, time required, voting machines, storage, and security.

Secretary of State staff provided members with a draft Comparison of Absentee Ballots Issued and Returned from 2000 to 2006, for the purpose of determining voter turnout and absentee voting trends. Members concurred that this information would be useful in developing an early voting pilot program.

At the *third meeting*, members were provided with an update on the Early Voting/Absentee Voting Survey to Municipal Clerks and more information regarding early voting procedures in other states. Members discussed a current challenge to the constitutionality of early voting in Maryland, and the possibility of it happening in Maine.

Linda Cohen, Municipal Clerk for Portland, provided the Study Group with a comparison of in-person absentee voting to overall absentee voting from 2002 to 2006. Members thought it would be helpful to obtain this information from other municipalities, as it might indicate the percentage of voters who would be interested in early voting.

Other early voting issues discussed were the handling of challenges, arrangements for poll watching and petitioners, ballot handling and storage of cast ballots, tallying ballots and release of election results, time period, process management, security, and meeting the requirements for accessible voting. Similar issues were discussed regarding the absentee voting process.

At the *fourth meeting*, members reviewed a second draft of the comparison of absentee ballots to total ballots cast, as well as an update of the percentages of in-person absentee voting to the total absentee ballots cast for the last three general elections. Phyllis Gardiner provided further information on constitutional challenges to early voting in other states and Julie Flynn reviewed information obtained from other states regarding their early voting programs.

In addition, members reviewed and further discussed recommendations for an early voting program and the absentee voting process that had been identified at the March 8th meeting. Members also discussed an outline for the study report.

At the *fifth and final meeting*, members reviewed and discussed a draft outline of the study report, and finalized their recommendations.

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III. BACKGROUND

History of Absentee Voting Laws

Maine has allowed some form of absentee voting for citizens not in the military since 1921, when the first statute on the subject was enacted along with a constitutional amendment to permit it.¹ The Maine Constitution, in Article II, section 4, expressly authorizes the Legislature to provide for “voting by citizens of the State absent therefrom in the Armed Forces of the United States or of this State and for voting by other citizens absent or physically incapacitated for reasons deemed sufficient”. The Supreme Judicial Court has interpreted this last phrase as authorizing the Legislature to define by statute the reasons for being absent on Election Day that are sufficient to entitle a citizen to vote absentee. *White v. Edgar*, 320 A.2d 668, 687 (Me. 1974).

Initially, the Legislature enacted absentee voting laws that provided limited reasons for absentee voting, in keeping with the constitutional provision. Over time, additional reasons were added to the statutes; however, voters still had to provide a reason for requesting an absentee ballot, and the reason had to be one of the reasons allowed in the law.

In 1995, the Legislature added a provision to 21-A MRSA §751 that stated “the voter’s belief that the voter will be unable to vote in person at the polling place is sufficient reason to allow an absentee ballot to be cast”. (*P.L. 1995, c. 459, §69, eff. Sept. 29, 1995*). This provision remained in place until 2000, when section 751 was repealed and replaced to eliminate the reasons for voting absentee. (*P.L. 1999, c. 645, §4, eff. April 10, 2000*).

Current Absentee Voting Process

Under current law, any registered voter who wishes to vote by absentee ballot may do so, provided that they request the ballot by one of the methods prescribed by law. These methods include:

- 1) **In person:** the voter requests a ballot (and votes) in-person at the municipal clerk’s office;
- 2) **Telephone request:** the voter makes a telephone request for the voter’s own ballot to be mailed to the voter;
- 3) **Written request (by voter):** the voter requests a ballot in writing to be delivered by mail to the voter, or provided to an immediate family member of the voter (who will then deliver the ballot to the voter);
- 4) **Written request (by immediate family):** an immediate family member of the voter requests a ballot in writing to be delivered by mail to the voter, or provided to an immediate family member of the voter (who will then deliver the ballot to the voter); or

¹ Soldiers were first allowed to vote absentee while serving in the military during the Civil War, pursuant to an amendment to the Maine Constitution adopted in 1864.

- 5) **Written request (by voter) – third person delivery:** the voter requests a ballot in writing to be delivered by a designated third person (someone other than the voter or an immediate family member of the voter). *Note:* A ballot delivered by a third person must be witnessed.

Each method of requesting a ballot has requirements for how the ballot is issued to the voter, how the ballot must be returned to the clerk, and what signatures or witnesses are required for the ballot to be accepted.

A voter who chooses to vote an in-person absentee ballot generally votes the ballot in the municipal clerk's office during regular business hours. Some municipalities offer extended hours for voters who want to vote by in-person absentee ballot, and municipalities may also offer off-site voting. Absentee ballots cast by residents of nursing homes, level II residential care facilities or certified congregate housing units (facilities at which the municipal clerk is required to conduct absentee voting) are also considered in-person absentee ballots.

Although the voter is not required to fill out an application when voting an in-person absentee ballot, the clerk is still required to fill out the required information on the absentee ballot envelope. The voter must sign the affidavit on the envelope and the clerk is also required to sign the absentee ballot envelope as a witness. The clerk must indicate on the envelope the date and time that the ballot was cast, and must indicate whether all requirements for casting the ballot were met. The clerk either marks the ballot envelope as "ok to cast" or indicates a reason that the ballot should be rejected.

Factors leading to this study

The 2000 elections (primary and general) were the first elections in which voters did not need to have a reason to cast an absentee ballot. Since 2000, increasing numbers of Maine voters have become accustomed to "no reason" absentee voting and have discovered the convenience of casting an absentee ballot. In particular, in-person absentee voting is a voting option that has been gaining popularity in Maine during the last several election cycles. Moreover, political parties and associations have begun to encourage absentee voting by mailing absentee ballot applications to their members or to voters in certain demographic groups.

Many municipalities experienced unprecedented levels of absentee voting during the 2004 Presidential election. After that election, numerous clerks expressed their concerns to Legislators and to the Secretary of State's office about the impact that such a level of absentee voting has had on both their financial and human resources. Clerks cited concerns with the amount of paperwork and tracking involved with absentee voting, including the handling of applications and envelopes and the creation and maintenance of the list of absentee voters as required by law. These concerns culminated in the discussion of early voting in the First Regular Session of the 122nd Legislature, and ultimately the adoption of the Resolve which required this study.

IV. DATA COLLECTED AND INFORMATION REVIEWED

At its first meeting, the Study Group decided to gather information from two main sources in conducting the study of early voting:

- 1) Municipal clerks in Maine (including data reported by the clerks to the Secretary of State as part of statutory reporting requirements), and
- 2) Other states.

Information Gathered from Municipal Clerks

Survey on Early Voting and Absentee Voting Issues

The Study Group discussed various issues that would need to be considered when implementing a pilot program for early voting. These issues included:

What

- Definition of “early voting”

When

- Time frame for conducting early voting

How

- Will it replace in-person absentee voting or be a supplement to it?
- Will it be optional or mandatory?
- Security; dealing with full ballot boxes
- Challenge process and poll watching
- Financial impact
- Management of process
- Petitioners and opponents; electioneering/campaigning
- Privacy and confidentiality
- “Transparency”
- Public education
- Affect on local elections and local ballot creation

Where

- Where would voting take place?
- Adequate space, availability, accessibility, advertising location

Who

- Election management personnel

The Study Group designed a survey that listed these issues and elicited feedback from municipal clerks on early voting and absentee voting processes. (*See Appendix C for a copy of the “Municipal Survey on Early Voting”*) The survey was distributed to all clerks

in the State by the Maine Town and City Clerks Association. Surveys were submitted by clerks individually or by groups of clerks after discussion at county meetings. There were 65 responses received, which is about 13% of Maine's 502 municipalities that conduct their own elections. Responses were received from small, medium and large-sized municipalities and represent different regions of the state. The responses were compiled and several reports were created to summarize and present the information. *(See Appendix C for a copy of the Early Voting Survey Reports)* These reports include:

- 1) **Early Voting Survey: Overall Responses.** This report provides the overall responses to early voting, which were broken down as "positive" (29), "negative" (17), and "ambivalent" (19).
- 2) **Early Voting Survey: Absentee Issues.** This report summarizes the clerks' responses to various issues surrounding the current absentee voting process. The most often cited issues of concern were:
 - Limited staff (37%)
 - Election Day processing of ballots (26%)
 - Limited office hours (15%)
- 3) **Early Voting Survey: Early Voting Issues.** This report presents the clerks' responses to various issues related to early voting. The top issues of concern were:
 - Ballot security/storage (42%)
 - Lack of available space (25%)
 - Limited staff (23%)
 - Financial impact (20%)
- 4) **Early Voting Survey: Clerks Comments.** This report includes a sampling of the narrative comments made by responding clerks on the various issues of concern in the survey.

Compiled Data on Absentee Ballots Issued

The Secretary of State has required each municipality to report the number of absentee ballots issued for each election for the past several election cycles. Moreover, municipalities must report the election results immediately after each election. Until 2004, the State calculated the voter turnout figures for each municipality based on the municipality's votes cast for the office with the highest total statewide. In 2004, the Legislature implemented a requirement for each municipality to report the total ballots cast for the municipality (which includes ballots containing overvotes or undervotes).

To allow the Study Group to analyze changes in the number of absentee ballots issued since 2000, when "no reason" absentee voting was adopted, the Elections Division staff created a report which compared the total absentee ballots issued to either the highest office votes cast or the total ballots cast (as applicable) for the general elections of 2000, 2002, 2004 and 2006. To compare like elections, which usually have a similar turnout, the report groups the 2000 and 2004 Presidential Elections on the left side and the 2002 and 2006 Gubernatorial Elections on the right side of the report. The first part of the report is a county and statewide totals page, while subsequent pages of the report

break the information down by county and municipality figures. (See Appendix D for a copy of the “Report of Absentee Ballots Issued and Returned 2000-2006”)

Survey on Percentage of Absentee Voters Voting In-Person

To illustrate the prevalence of in-person absentee voting, Linda Cohen provided a summarized breakdown of absentee voting in Portland for the last several years. These numbers detail Portland’s increase in absentee voting in general, and in-person absentee voting in particular.

<i>Year</i>	<i>Type of Election</i>	<i>State Absentee Ballots Cast In-Person*</i>	<i>Total State Absentee Ballots Cast*</i>	<i>% of Total State Absentees Cast In-Person</i>
2002	Gubernatorial	1066	2796	38%
2003	Referendum	916	2008	46%
2004	Presidential	5541	10059	55%
2005	Referendum	1752	3470	50%
2006	Gubernatorial	1974	4986	39%

* *Note:* The number of in-person and total absentee ballots cast for Portland is actually double the numbers presented here, since each voter also cast a municipal ballot.

The Study Group decided to survey members of the Clerks’ Association again for the number of absentee ballots cast in-person (i.e. in the presence of the clerk) for each general election year, beginning in 2002 if possible. Because municipalities are not required to track this information, only 21 municipalities were able to provide data on in-person absentee voting rates for the general elections of 2002, 2004 and 2006. However, this small sampling shows that the percentage of absentee voters ranges from a low of 25.15% (Kittery) to a high of 62.9% (Hallowell). (See Appendix D for a copy of the report entitled “Percentage of Absentee Voters Voting In-Person”)

Information Gathered from Other States

The Study Group obtained an Absentee and Early Voting summary prepared by the National Conference of State Legislatures. The summary included a table of all states indicating when absentee ballots are cast and when they are counted. Based on this initial information, Phyllis Gardiner began a search of other state laws on “early voting”. This information gathering highlighted the difficulty of obtaining legitimate comparisons because of the variety of names given by the states to their version of early voting or in-person absentee voting. Some states allow in-person absentee voting prior to Election Day and call it early voting, while other states conduct actual early voting with the same voting machines or ballots used by voters on Election Day.

The Elections Division staff made follow-up contact to states to confirm which states conducted true “early voting” rather than just in-person absentee voting, and also to

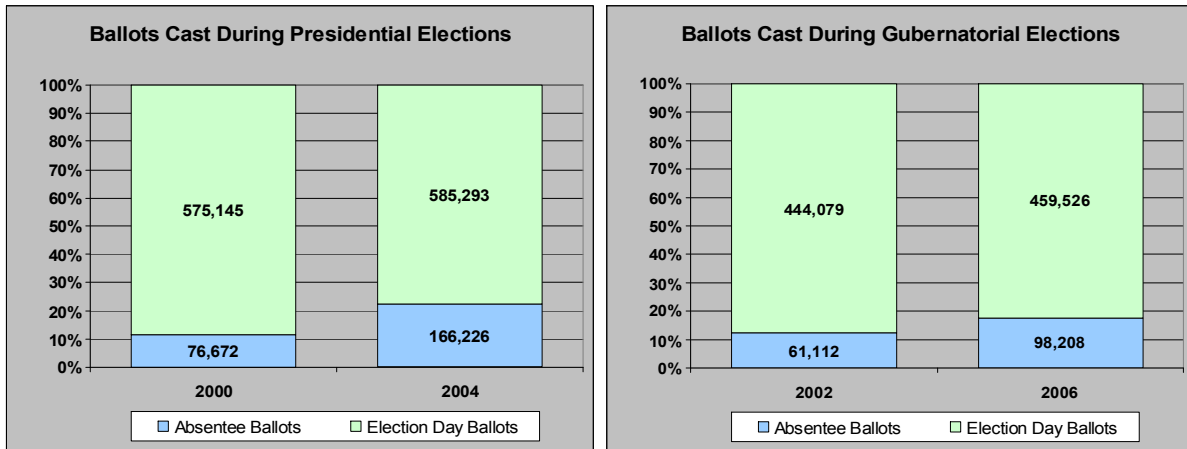
determine which states allow processing of absentee ballots before Election Day. In gathering and summarizing this information, the Study Group paid particular attention to the same issues surrounding early voting that were identified by group members and included in the survey of municipal clerks. (*See Appendix E for a copy of the “Summary of Other States that Allow Early Processing of Absentee Ballots (Before Election Day)”*; *the “Summary of Other States with ‘Early Voting’”* and *the “Summary of Early Voting Laws in Other States”*)

One issue that emerged from a conversation with state election officials in Maryland was the successful legal challenge to that state’s recently enacted early voting law, based upon language in Maryland’s State Constitution. This information led the Study Group to request that Phyllis Gardiner research that case and any others related to early voting. The results of that research are discussed in the next section of this report.

V. DISCUSSION AND ANALYSIS OF ISSUES

Increase in Absentee Voting

A review of the absentee voting reports in Appendix D clearly shows a trend toward increased use of absentee voting. Although the statewide percentage of absentee ballots cast between 2000 and 2002 increased only slightly (from just under 12% to just over 12%), bigger gains were seen in 2004. The 2004 percentage of absentee voting averaged 22% statewide, which was nearly double that of 2000. The percentage of absentee voting for the 2006 Gubernatorial election, while not as high as the 2004 percentage, was 17.6%, nearly 1 ½ times larger than the similar election in 2002.



It is expected that absentee voting for presidential elections will be higher than for the gubernatorial elections, given that uniformed service and overseas voters are more aware of the federal candidates. Additionally, the Federal Voting Assistance Program, which administers the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), provides information and special mail handling programs to facilitate UOCAVA voting for the presidential elections.

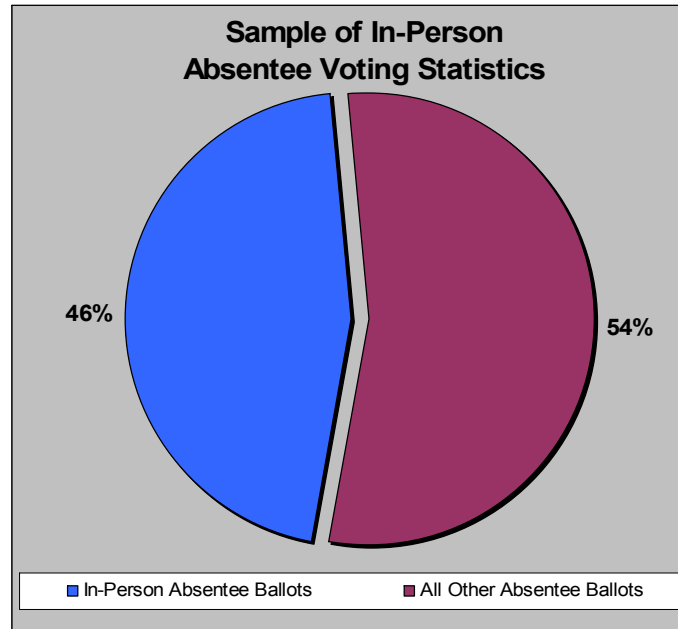
In 2004, over 1 in 5 Maine voters statewide cast an absentee ballot. In Cumberland County almost 1 in 3 voters chose to cast their ballot that way. It appears that many voters prefer the absentee process to voting at the polls on Election Day.

At the same time, many municipal clerks are finding the absentee voting process more and more difficult to maintain. The survey of municipal clerks highlights the concerns of limited staff, limited hours and the challenges of processing large numbers of absentee ballots on Election Day while the clerks are managing the number of voters still casting their ballots at the polls.

The steps involved with processing absentee ballots, handling and securing the voted ballots, and maintaining a tracking system for absentee ballots issued have led clerks to request a more streamlined method of voting before Election Day – and to support a true system of early voting.

Percentage of Absentee Voters Voting In-Person

Although a much smaller sample of municipalities (21) provided data on the percentage of absentee voters voting in-person, the majority of these jurisdictions (17) had more than 4 of every 10 absentee voters casting their ballot in-person, in the presence of the clerk.



In the “*Early Voting Survey: Absentee Issues Report*” and the “*Clerks Comments Report*” several clerks reported that the number of in-person ballots increases significantly in the last few days before the election. In fact, these clerks commented that absentee voting on the day before Election Day is becoming unmanageable – even to the point where voters are waiting in line for long periods of time to vote by absentee ballot so they can avoid waiting in line at the polls on Election Day!

This observation seems to support the idea that a streamlined in-person voting process just before Election Day would help alleviate the administrative burdens on municipal clerks’ offices while still providing access for voters to an easy and convenient voting process before Election Day.

Overall, Study Group members agreed that the current absentee ballot system is stressed and that an unusually high turnout and percentage of absentee voting would be impossible for them to handle. Regardless of whether early voting replaces the absentee process or is a supplement to it, Study Group members believe that something must be done to relieve the administrative burden on municipal election officials.

Alternatives to Early Voting

The municipal survey bolsters the Study Group's assessment that the administration of the absentee voting process has become overwhelming; however, clerks are divided as to the solution. Some clerks support implementation of early voting. Others state that the options of eliminating in-person absentee voting on the day before the election, or allowing the early processing of absentee ballots prior to Election Day, would be easier to administer than early voting and would obviate the need for an early voting system.

Therefore, although not specifically a charge of this study, Study Group members decided to explore these alternative ideas to assist clerks with the administrative concerns of processing an increasing number of in-person absentee ballots. While gathering information from other states on early voting, Elections Division staff also looked for information on cutoff dates for absentee or early voting as well as for information on processing absentee ballots before Election Day.

Cutoff for Absentee Voting before Election Day

Clerks who support a cutoff for in-person absentee voting at some time before Election Day expressed concerns regarding the large number of absentee voters who wish to vote on the day before the election. In many cases, clerks reported that voters were actually waiting longer to vote absentee than they would if they had voted at the polls on Election Day. The day before Election Day is the day on which clerks and registrars are generally doing all the final steps of election preparation, including verifying the list of absentee ballots received to date, printing the incoming voting list to be used at each voting place and completing the physical set-up of each voting place.

Clerks are being pulled in many different directions on the day before the election, including the handling of non-election business that the office conducts. Often the final work of verifying absentee ballots and printing the voting lists does not occur until after the clerk's office closes on Monday, as this is when the clerk has some uninterrupted time. Some clerks report that they must work late into the evening on Monday to accomplish everything, and are thus exhausted for Election Day.

Several of the states surveyed regarding early voting procedures report a cutoff of early voting or absentee voting on the second business day before the election. In states or counties with Saturday hours, this cutoff may be at the close of business on Saturday.

Early Processing of Absentee Ballots (Before Election Day)

Clerks who support the early processing of absentee ballots cite the difficulties of processing large numbers of absentee ballots while trying to manage Election Day activities. Extra staff is often needed for processing absentee ballots and in some municipalities it takes all day to complete the processing of all the absentee ballots.

Several of the states surveyed reported that they do some type of early processing of absentee ballots before Election Day, but most states do not count the ballots or report any results before the polls close on Election Day. Processing may include verifying signatures on the envelopes with the voters' registration cards or applications for the absentee ballot, opening the envelopes and flattening the ballots or putting the ballots into an optical scan tabulating machine or paper ballot box.

The Study Group thoroughly discussed the concept of early processing of absentee ballots as an option to alleviate the current strain on municipal resources during Election Day. The issues discussed related to the security of ballots, transparency of the process, and keeping the process similar to the one used for Election Day processing. Procedures for inspecting the ballots before processing, as well as for pollwatchers and challenging of ballots during processing will have to be provided, just as they are during Election Day processing.

Participants discussed the time frame for allowing inspection of absentee ballots before early processing begins and possibly increasing it to one hour. (The inspection time for ballots processed on Election Day is 30 minutes). The time of inspection would be listed on the Notice of Election. If some late-received absentee ballots are going to be processed on Election Day, that inspection period would have to be designated on the Notice of Election as well. Some participants were concerned about having two inspection times, but the Study Group understood that allowing early processing of absentee ballots would require additional measures for security and transparency.

Processing absentee ballots before Election Day will require that ballots and tabulating machines be secured overnight, and that election results are not produced from the tabulating machine or paper ballots are not counted until after the polls close on Election Day. Although the current requirements for absentee applications and envelopes provide more administrative burden for the municipal clerks, they also provide security and accountability for the ballots until they are cast. Therefore, the security of processed ballots will need to be carefully considered.

Early Voting

Definition of Early Voting

Maine already has in-person absentee voting, which many states define as "early voting". For discussion purposes, the Study Group considered early voting to be a time period before an election during which voters would have the opportunity to cast a ballot at a designated voting place within their municipality in the same manner as on Election Day.

Reasons for Early Voting

The Study Group discussed several reasons for implementing early voting. In some states with early voting, election officials report that voters like the assurance that

their ballots have actually been cast, instead of wondering whether their absentee ballots might not get counted when dropped off or mailed in for casting on Election Day. This sentiment was also expressed by some Maine clerks in the municipal survey. Voters have indicated to clerks a lack of faith in the absentee ballot process: they want assurance that their ballots are going to be secure and cast.

In other states, voters appreciate the extra day or days for voting, as a matter of convenience, and the dramatic increase of absentee voting in Maine seems to indicate the same trend. From the perspective of the Secretary of State's Office, the goal is always to promote voter turnout and to make voting as accessible as possible, while safeguarding the integrity of the election process. The adoption of an early voting process in Maine supports that goal.

Review of Maine Clerks' Surveys of Early Voting

It is interesting to note that the clerks reported some of the same issues of concern for early voting as they did for absentee voting, particularly limited staff and resources. The biggest issue for early voting, however, is ballot security/storage. Clerks take their responsibilities very seriously and know that to conduct early voting they will have to provide a location and a management process that is very secure, both while early voting is occurring and at the end of each day that early voting occurs.

Other concerns with early voting include the lack of available space in the clerk's office to conduct early voting, the time needed for set-up and management of an early voting location, and the issue of possible machine malfunctions for municipalities with optical scan tabulating machines. Municipalities that hold their own elections at the same time as statewide elections have an additional burden.

The fact that not all clerks believe they can safeguard early voting or provide the staffing and other resources to conduct early voting certainly has implications for the recommendations of the Study Group.

Review of Early Voting Laws in Other States

The survey of other states shows that the only states currently conducting early voting are those which have county-based (not municipality-based) election administration systems. The New England states, Michigan, and Wisconsin are the only states that administer federal and state elections at a municipal level. None of these states currently has early voting, although Michigan is considering legislation to adopt it. The states with county-based administration may only have a single voting site available for early voting, in the county clerk's office, where the county sheriff or other law enforcement personnel can safeguard the voted ballots. Adopting such a system in Maine, with over 500 municipal election jurisdictions, is a challenge that will need to be carefully considered before implementation.

There are nine states that provided more detailed information about early voting. The specific processes vary from state to state, but there are certain elements common to early voting across these states. Some of these include:

- The early voting period is between 10 and 15 days in length;
- Some states have early voting in place of in-person absentee voting;
- Some states require set hours for early voting, while others allow county election administrators to set the voting times with certain minimum hours;
- Some states allow State election administrators to establish early voting locations, while others allow the county election officials to do so;
- Some states have the voter sign an application or certificate for early voting, while others have an early voting list or roster that the voters must sign;
- All states require some form of security which is set by rule or identified in a plan (e.g. ballot boxes or machines must be sealed, the number of voters/ballots issued each day must be tracked and there must be a reconciliation of the number of ballots cast with the number of voters checked off the list as having voted);
- Most states allow for the challenging of early voters and provide for provisional ballots;
- Most states allow for pollwatchers or observers;
- Several states specifically allow the counting of an early voted ballot if the voter dies before Election Day (*Note: in Maine, absentee ballots are not opened or counted if the voter dies before the polls open on Election Day*); and
- One state, North Carolina, requires counties to submit a plan to the State and be approved to offer early voting (called “one-stop” voting); the State has standards for early voting and approves the county plans that comply.

Analysis of Early Voting Issues

Constitutional Issues

Early voting laws have been challenged in court in a few other states. In Oregon, Texas and Tennessee, the argument was made that those states' laws allowing early voting conflicted with federal statutes, which establish the first Tuesday after the first Monday in November in even numbered years as Election Day for all federal office holders, nationwide. *See* 2 U.S.C. §§ 1, 7 and 3 U.S.C. § 1. In each of these cases,² the federal courts upheld the state's early voting laws, reasoning that the federal statute merely establishes the date on which the election for federal offices must be consummated, and does not preclude states from allowing votes to be cast early as long as the election is not concluded until the polls close on Election Day. The courts were heavily influenced by congressional approval of absentee voting.

The Court of Appeals in Maryland recently ruled that Maryland's early voting statute is in conflict with a provision in the state constitution specifying that all general elections "shall be held on the Tuesday next after the first Monday in the month of November." Md. Const., art. XV, §7; *Lamone v. Capozzi*, 912 A.2d 674 (Md. 2006). The court concluded that the Maryland Constitution recognizes only two methods of voting -- in person voting and absentee balloting -- and it held that early voting was not a form of absentee balloting since it was not limited to people who would be absent or otherwise unable to get to the polls on Election Day.³

This appears to be the only court decision addressing a challenge to early voting on state constitutional grounds that has been reported so far, even though many states have constitutional provisions establishing the Tuesday following the first Monday in November as Election Day.

If the Legislature decides to adopt early voting statewide, following implementation of the pilot recommended in this study, it may be appropriate to consider amending Maine's Constitution at the same time in order to eliminate the risk that an early voting statute would be challenged on these grounds.

² *Millsaps v. Thompson*, 259 F.3d 535 (6th Cir. 2001)(upholding Tennessee early voting statutes); *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169 (9th Cir. 2001)(upholding Oregon vote by mail statutes); and *Voting Integrity Project Inc. v. Bomer*, 199 F.3d 773 (5th Cir.), *cert. denied*, 530 U.S. 1230 (2000) (upholding Texas early voting statutes).

³ The provision in the Maryland Constitution on absentee voting is somewhat similar to Maine's in that it authorizes the Legislature to provide for absentee voting by those who are "absent at the time of any election in which they are entitled to vote" or who "are unable to vote personally." Md. Const., art. I, §3.

Implementation Issues

The first issue to be considered is the *applicability of an early voting program*; whether the program should be a:

- 1) **Mandatory system - applicable to all municipalities.** The fact that Maine clerks are not universally supportive of early voting as the solution to the administrative burdens of increased absentee voting argues against the implementation of a mandatory process statewide. Clerks from large and small municipalities shared their concerns about providing adequate staff and security for early voting. It doesn't seem prudent, therefore, to implement a mandatory system when the administrators of the system aren't prepared or able to provide the necessary staffing or security.
- 2) **Tiered system – applicable only to certain municipalities (i.e. municipalities of a certain size or meeting other criteria).** There are several election statutes that use a tiered approach; for example, poll opening times apply to municipalities based on their size. Since there aren't any obvious criteria on which to establish such a tiered system for early voting this does not seem to be a viable option.
- 3) **Optional system – applicable only to municipalities that choose to use it for an election.** There are several municipalities that seem willing and able to adopt early voting, and assert that they are prepared to implement appropriate security measures and provide sufficient resources to accomplish it. This fact argues most strongly for an optional system. However, even with an optional system, the State must provide some uniform standards for the process to ensure that municipalities that opt to conduct early voting can actually provide a successful implementation. Another factor to consider in an optional system is who should have the authority to opt for or approve early voting in a municipality; e.g. State election officials, the municipal officers, the municipal clerk, etc.

Another important issue is how to *safeguard the integrity of the election*; ensuring that voters who cast an early voted ballot are tracked and can only vote once for an election. Other early voting states have achieved this goal in the following ways:

- 1) **Voters sign an application or certificate for early voting.** Because in-person absentee voters in Maine do not have to complete an application, requiring an application or certificate for an early voter would seem to increase the paperwork burden for the election officials and do little to streamline the voting process.
- 2) **Voters sign the early voting list or roster.** Although voters on Election Day do not sign the incoming voting list, employing this option for early voters provides an important safeguard without adding a layer of paperwork for the election officials. One issue, however, is that voters' signatures are not currently public information pursuant to 21-A MRSA §196; so if early voters sign the early voting list, the list itself could not be copied and the names of early voters would have to be provided to the public by other means.

The security of voted ballots is a third matter to be considered. Different methods may need to be devised for municipalities that use optical scan tabulating machines and those with hand-counted paper ballots. There are three options that could be used for securing voted ballots:

- 1) **Remove voted ballots from the ballot box at the end of each day of early voting and store the ballots in sealed tamper-proof containers.** This method would most likely be used for municipalities with optical scan tabulators. Since the ballots from the “fully-counted bin” of the ballot box have been tabulated by the machine, the ballots could be safely stored in sealed tamper-proof containers, just as they would be on election night. The ballots from the “not fully counted” bin of the ballot box may have ballots with write-in names to be recorded or ballots with voter intent to be discerned and manually tallied. It would be important to separately seal these ballots in tamper-proof containers and ensure that the ballots are unsealed, reviewed and tallied (if applicable) after the polls close on election night.
- 2) **Leave the ballots in the ballot box at the end of each day, but seal the bins (tabulating machines) or the slide opening (hand-count ballot box) each day with a numbered seal or seal tape.** This option is not as viable for optical scan tabulators, since the “fully counted bin” will become full periodically, and the ballots removed and sealed in tamper-proof containers, just as they would be on Election Day. For hand-count municipalities, this option would probably work best, since none of the ballots has been counted; so long as the ballot box is opened at the end of each day and a reconciliation is performed to compare the number of ballots cast with the number of voter list signatures for that day. The ballots would not be counted as to votes for any race or question, and the ballot box would be sealed by some mechanism that covers the opening of the slide compartment and lock hasp after the reconciliation is completed.
- 3) **Use a combination of removing ballots and keeping some ballots in the ballot box.** This process would make most sense for municipalities with optical scan machines. The ballots from the “fully counted bin” would be removed as the ballot box got full and at the end of each early voting day. All of these ballots would be sealed in tamper-proof containers. The ballots from the “not fully counted” bin could be banded at the end of each day, and the packet of ballots placed back in the ballot box bin. The bin would then be sealed using a numbered seal or with numbered seal tape.

In each of these situations, the voting machines and ballot boxes must be stored each night in a secure location with limited access by election officials, and provisions must be in place to ensure that no single election official can access the ballots or machines unaccompanied.

The confidentiality of election results before Election Day must also be considered. Under current law, results from ballots cast into tabulating machines by

Election Day voters, or for processed absentee ballots, are considered confidential and no results may be tallied or released to the public until all ballots have been cast and the polls closed. The underlying public policy is to ensure that voters who have not yet voted in an election are not influenced to vote differently because of partial results becoming public. The same policy would seem to support preventing the release of results from early voted ballots before the close of the polls on Election Day. A related concept is whether to separately track and count early voted ballots and absentee or Election Day ballots. One reason to do this is to facilitate ballot reconciliation and auditing, which promotes transparency and accountability in the process. An argument against this is that if results remain segregated, and only a small number of people cast an early voted ballot, the secrecy of those voters' ballots could be compromised.

Another important issue is the *timing of early voting*. If the early voting process is intended to alleviate the influx of in-person absentee voting that occurs in the days just before an election, it would seem that early voting should be offered during the week before the election. This would make it possible for municipalities to separately staff and maintain a more streamlined voting effort for in-person voting, at a time when the largest number of those voters cast their ballots in the presence of the clerk. The length of time during which early voting is offered should not be so large that it becomes impossible for the clerks to adequately staff and secure the voting process.

A related consideration is *whether early voting replaces or is supplemental to in-person absentee voting*. In order to allow municipal election officials to adequately staff and manage the early voting process, it seems prudent not to require them to conduct early voting and in-person absentee voting at the same time. However, before the early voting period begins, clerks should be able to conduct the regular in-person absentee voting process in the clerk's office as soon as absentee ballots become available (which may be as early as 45 days before an election).

Voting system and central voter registration system issues must also be addressed for early voting, as follows:

- 1) **Optical scan tabulating machines** - The primary issue is whether these machines are capable of handling early voting (e.g. whether the power packs and memory cards would be affected by repeatedly turning the machines on and off). The vendor for the Accu-Vote machines, LHS Associates, confirmed that there would be no problem with the machine or the memory pack if the machine were to be unplugged each night and plugged in again each morning for several days. There also would be no problem with the information stored in the memory pack when the machine is unplugged on the last day of early voting and plugged in for printing results on election night. However, the vendor recommends using different machines for early voting and the processing of absentee ballots, with the memory card for early voting remaining sealed in the machine from the end of early voting until the results are totaled on election night. This eliminates the possibility of early voting information being lost if the memory card is removed and stored elsewhere and something happens to the card.

- 2) **Accessible Voting System (AVS) Issues** - Because we have defined early voting to be a time period before an election during which voters would have the opportunity to cast a ballot at a designated voting place within their municipality in the same manner as on Election Day, it is the opinion of the Secretary of State that the AVS would have to be available at each early voting site. The infrastructure to support an AVS unit includes a dedicated phone line and electrical outlet for a phone/fax machine. If early voting will not be conducted at the same location as Election Day voting, municipalities will have to arrange for the required infrastructure to be installed.
- 3) **Central Voter Registration (CVR) system** – The current CVR software application allows municipalities to print their Incoming Voter Lists for Election Day and to track the required information for processing absentee ballots. If the early voting process is adopted by the Legislature for use across the state, the Division of Elections will need to evaluate the CVR for any changes that could be made to the software to facilitate management of early voting.

Other logistical issues to be considered for early voting include:

- 1) Set-up and physical accessibility of the polling place for early voting;
- 2) Staffing for early voting (deputy clerks or election clerks);
- 3) Pollwatching and challenged ballots; and
- 4) Notice of the early voting process.

When establishing these procedures, it will be of paramount importance to provide a process that is transparent to the public and protects the integrity of the election process. Therefore, a good place to start is to review the current Election Day procedures and determine what changes, if any, should be made to accommodate early voting.

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V. RECOMMENDATIONS AND CONCLUSIONS

Recommendation 1:

Establish Cutoff Dates for In-person Absentee Voting and Issuing Absentee Ballots

The Study Group's first recommendation is to establish a cutoff date for in-person absentee voting. The need to preserve the day before Election Day for preparation was already evident before the Study Group on Early Voting was formed. Such a provision was included in the Secretary of State's proposed bill, L.D. 1761, "An Act To Amend the Election Laws," the relevant portion of which is reprinted here:

Sec. 48. 21-A MRSA §753-B, sub-§8, as amended by PL 2005, c. 568, §19, is further amended to read:

8. Absentee voting in presence of clerk. A person who wishes to vote by absentee ballot may, without completing an application, vote by absentee ballot in the presence of the clerk, starting as soon as the ballots are available in the clerk's office and ending at the close of business on the 2nd business day before the election. On the day before Election Day and on Election Day, absentee voting is limited to ballots requested in writing pursuant to section 753-A and issued pursuant to this section for voting outside the presence of the clerk. The method of voting is otherwise as prescribed in this article. After the person has voted, the clerk shall sign the affidavit on the return envelope as a witness, indicate on the envelope that the voter voted in the presence of a clerk and ensure that the affidavit on the return envelope is properly completed by the voter. For the 45 days preceding an election, during the hours when the clerk's office is open and may be conducting absentee voting, the display or distribution of ~~any~~ advertising material intended to influence a voter's decision regarding a candidate or question on the ballot for that election is prohibited within the clerk's office and on public property within 250 feet of the entrance to the building in which the clerk's office is located.

For the same reasons, L.D. 1761 proposes, and the Study Group on Early Voting recommends, that municipal clerks not be required to issue a ballot by mail to an address outside the municipality for a voter whose request is received on the day before Election Day or to any voter whose request is received on Election Day.

The municipal clerk would still be required to provide absentee ballots in response to third-person requests. Additionally, a voter unable to vote in person at the polls on Election Day could obtain a ballot by completing an application and voting the ballot outside the presence of the clerk. The voter could then hand-deliver the ballot back to the clerk either the same day or on Election Day.

These absentee voting deadlines have been enacted in several other states, and they do not significantly restrict a voter's opportunity to cast a ballot. Both of these changes would provide election officials with a sufficient amount of time on the Monday before Election Day to prepare for the election and not compromise the accuracy and integrity of the voting process.

Recommendation 2:
Allow Early Processing of Absentee Ballots (Municipal Option)

The Study Group's second recommendation is to allow municipal clerks the option of processing absentee ballots on the day before Election Day. If the Legislature wishes to adopt this recommendation, the Secretary of State could draft an amendment to effect this change in L.D. 1761.

Under this recommendation:

- Processing would take place at a designated time between 9:00 a.m. and 9:00 p.m., at the clerk's discretion.
- Processing times would be designated in the Notice of Election.
- Municipalities would notify the parties and the Secretary of State by mail of the intent to process absentee ballots early.
- An adequate amount of time for inspection of absentee lists and envelopes (one hour before the start of ballot processing) would be provided and referenced in the notice.
- Ballots would not be counted and voter intent not determined until the polls close on Election Day.
- Ballots would remain secure in sealed, tamper-proof containers, or in sealed optical scan or hand-count ballot boxes.
- Procedures for handling full ballot boxes, pollwatching and challenging ballots would be the same as on Election Day.

Absentee voting has increased to the point where it has doubled in some municipalities over the last six years. Many municipalities no longer have the human resources or the time on Election Day to process absentee ballots. Allowing absentee ballots to be processed on the day before Election Day would not only provide relief to election officials, but would provide the parties with a longer period for inspection and a less hectic atmosphere for the process.

Recommendation 3:
Conduct a Pilot Program for Early Voting during the November 6, 2007
Referendum Election

The Study Group's third recommendation is to change the date for the pilot program to the November 6, 2007, Referendum Election, and to direct the Secretary of State to conduct the pilot according to the Pilot Plan and the Uniform Guidelines for Early Voting provided later in this recommendation. For the pilot program, the Uniform Guidelines for Early Voting would apply only to the municipalities selected by the Secretary of State to participate in the pilot (i.e. other municipalities could not opt to participate).

Pursuant to the Resolves of 2005, c. 70 "Resolve, Directing the Secretary of State to Design a Pilot Program for Early Voting", the Secretary of State was charged with designing an early voting pilot program for the November 2008 general election. After careful consideration of early voting, the Early Voting Study Group determined that a pilot program would be better introduced for the November 6, 2007 election. This determination is based on a number of factors:

1. Turnout for the November 2007 Referendum Election will be significantly less than turnout for the November 2008 Presidential Election. It would be far easier to work out any potential problems at an election with lower turnout.
2. After the pilot is held, the Division of Elections can identify any problems with the current plans and make necessary corrections.

Pilot Plan

Three municipalities have expressed an interest in participating in the pilot program: Portland, Bangor and Readfield. Portland and Bangor represent two of the larger municipalities in the State which have both experienced a dramatic increase in absentee voting activity. Both Portland and Bangor currently utilize optical scan voting tabulators. Readfield represents a smaller municipality (2,100 registered voters) that uses hand-counted paper ballots. The Secretary of State would also like to recruit one additional small municipality with hand-counted paper ballots for the pilot.

All municipalities participating in the pilot would be required to submit an Early Voting Plan as described later in this report. The Secretary of State would work with each municipality to ensure that the Early Voting Plan addresses all pertinent subjects. The Division of Elections would also facilitate one or more meetings for all participants so that the election officials from each municipality could share concerns and ideas for effective implementation.

Crucial to the success of the early voting pilot program will be effective tracking of early voting activity. Although the State's Central Voter Registration system (CVR) does not currently have a module designed for this purpose, for the pilot program, the State will work with the participating municipalities to design a manual program for tracking voter

participation. Pilot participants could manually mark the Election Day incoming voting list with the designation “EV” to indicate which voters have cast an early ballot.

The Early Voting Study Group does not recommend making any programming changes to the CVR until the Legislature votes on whether it wants to permanently adopt early voting. At that point, a CVR report could be designed to include an image of the voter’s signature on the incoming early voting list. Additionally, the CVR could pre-mark the Election Day incoming voting list with an “EV” designation.

Uniform Guidelines for Early Voting

Early voting is defined as a time period before an election during which voters would have the opportunity to cast a ballot at a designated voting place within their municipality in the same manner as on Election Day.

Early voting would be optional for each municipality. The municipal clerk, in consultation with the municipal officers, would determine if the municipality wishes to participate in the early voting program for an election. Before each election at which a municipality decides to offer early voting, the municipality would have to submit an Early Voting Plan to the Secretary of State.

For municipalities choosing to offer early voting during the prescribed early voting period, early voting would take the place of in-person absentee voting during that time period. Municipalities offering early voting would be required to offer in-person absentee voting prior to the commencement of early voting.

Early Voting Plan

Municipalities wishing to offer early voting before any election would be required to file a plan with the Secretary of State’s Office not less than 60 days before early voting is scheduled to begin. The purpose of the plan would be to assure that the municipality had adequate staffing, storage space and security measures in place to handle early voting. The Secretary of State would respond to early voting plans (by approving, disapproving, or approving with conditions) no less than 45 days before early voting begins. Plans would be submitted on an application form designed by the Secretary of State and would include all information the Secretary of State deems necessary in order to determine if the municipality meets all the requirements to hold early voting.

Timeframe for Early Voting

Early voting would be conducted during the period of Monday through Friday immediately preceding Election Day. Early voting must be offered during the time that the clerk’s office is regularly opened during the regular work week. Municipalities, at their discretion, could also choose to offer early voting during extended hours, such as evening hours or on the Saturday immediately preceding the election. The days and hours that early voting would be offered in each municipality would be included in that municipality’s Early Voting Plan. Any hours offered that are beyond the regular hours of the State (8 a.m. to 5 p.m., Monday-Friday) would have to be approved by the Secretary of State.

Location for Early Voting

Early Voting would take place in one location per municipality. The location, chosen by the municipal clerk, would generally be the municipal office, but it could be an off-site location if that location were found to be more desirable and more fully meet the needs of the municipality. The clerk would be required to identify the selected location in the Early Voting Plan. At a minimum, the location would need to meet the following requirements:

1) Be accessible for persons with disabilities. The designated early voting site would have to meet ADA accessibility requirements, as do all polling places currently. Accessibility includes physical accessibility, but also requires the use of the Accessible Voting System (AVS). Municipalities would need to demonstrate that the AVS is operable in the chosen location, including documentation that a dedicated phone line is available for use of the phone-fax combination.

2) Be of adequate size. The polling place must meet the requirements of a polling place as provided for in Title 21-A, Maine Law on Elections, section 627. The clerk would have to include a diagram, including dimensions, of the Early Voting site in the Early Voting Plan. The polling place must include a guardrail which is constructed so that only those inside its enclosure can approach within 6 feet of the ballot box and the voting booths. Voting booths must be of an adequate number to prevent long lines for those choosing to vote early.

The early voting location must be large enough to allow at least one poll watcher from each political party to remain outside the guardrail.

3) Be available for the entire early voting time. If a municipality is using a location that is not owned by the municipality, the municipal clerk must include in the Early Voting Plan documentation that the site is available for the entire early voting period.

Security

It would be the responsibility of the municipality to guarantee adequate security for the early voting ballots. All ballots, ballot boxes and ballot tabulators must be properly secured before, during and after the time when early voting is taking place. The Early Voting Plan must detail the procedures and mechanisms that the municipality will take to ensure proper security.

While final policy decisions for security would be left to each municipality, provisions should include:

- A locked area (vault or closet) accessible only by the municipal clerk. All ballots, ballot boxes, tabulators and incoming voting lists should be secured in this area when not being used for early voting.

- Description of the methods the municipality will utilize to detect any tampering – including use of plastic or paper seals and/or certificates with signatures of appropriate election officials.
- The security plan must also include how the municipal clerk would prevent the premature release of election results. The clerk would be responsible for preventing tabulation of election results prior to Election Day. No person may have access to the results on the tabulating machine used for early voting prior to election night. *Note: the Legislature may wish to put this prohibition into the election laws now, so that it would be in place for the pilot.*

Reconciliation of Ballots Cast

On a daily basis, the municipal clerk would be required to ensure that the total number of ballots cast is equal to the number of signatures on the early voting incoming list. Municipalities using optical scan tabulators could accomplish this by comparing the number of signatures on the incoming list to the public counter on the tabulator. After daily reconciliation, the election officials would follow the procedures outlined in Section IV of this report for security of voted ballots (*see page 21*).

Municipalities using hand-counted ballots would need to open the ballot box to count the number of ballots in the box. Election officials performing this task must be instructed to count the number of ballots without unfolding them, thus concealing how voters marked their ballots. Ballots would then be banded, with the date marked on a separate sheet of paper, and then returned to the ballot box. After the polls have closed on election night, the bands and date sheets must be removed so that the ballots can be intermixed with all other ballots (Election Day and absentee ballots) for counting.

Staffing

The municipal clerk would be the supervisor of early voting. The clerk must ensure that adequate staffing is available on-hand at all times to conduct early voting. The clerk should be assisted by sworn deputy clerks or assistant clerks. While the municipal clerk could choose to use election clerks nominated by the political parties and appointed by the municipal officers, the Secretary of State realizes it may be difficult to secure the services of these election clerks on a date that is not Election Day or for an extended period of time. Therefore, the Study Group does not recommend the mandatory use of election clerks.

Notice of Early Voting

Upon the Secretary of State's approval of the municipality's Early Voting Plan, the municipal clerk is required to post the location and hours of early voting in at least one location within the municipality. The municipal clerk shall also send a copy of the approved Early Voting Plan to the municipal committee of each qualified party. The Secretary of State shall give notice to the State committee of each party of which towns have been approved for early voting. The Secretary of State shall also post a list of approved early voting municipalities on the Department's official web site.

Early Voting Procedure

The procedure for early voting would be essentially the same as on Election Day, and any provisions relating to Election Day activities in Title 21-A, Maine Law on Elections, would apply, including, but not limited to, provisions for political activities at the voting place, petitioners, poll watchers, candidates and challenges. An early voter who is not already registered to vote must be allowed to register and vote. If the voter cannot provide sufficient proof of identity or residency, the voter must vote a challenged ballot, as required by law.

The incoming voting list that will be used for early voting will be slightly different than the one used for Election Day voting, as the early voting incoming list would include an image of the voter's signature as well as a space for the early voter to sign the list. This step would provide an additional check and balance to allow the clerks to reconcile the number of early ballots cast.

Election officials would be required to enter into the CVR which voters have cast an early ballot. That fact would be indicated on the Election Day incoming list to prevent voters from voting twice. This is similar to the practice used for absentee voters currently.

Recommendation 4: **Secretary of State to Report to the Legislature by January 15, 2008, about the Pilot Program**

The Study Group's final recommendation is that the Secretary of State report back to the Second Regular Session of the 123rd Legislature with an analysis of the pilot program, including a recommendation for adopting early voting statewide. Legislative changes could be made to the appropriate statutes, and the Maine Constitution, if the Legislature chooses to adopt early voting as a permanent election practice. The Elections Division could then fully implement early voting prior to the 2008 general election.

Conclusions

The Study Group believes that the recommendations, conclusions and design of a pilot program for early voting outlined in this report, meet the requirements of the Legislature's Resolves of 2005, c. 70, as well as the goals the Study Group established at the outset of the project:

- 1) To enhance privacy and confidentiality;
- 2) To relieve administrative overhead;
- 3) To maintain integrity of the voting process; and
- 4) To maintain or enhance access to the voting process.

The changes to the State's current absentee voting processes recommended here, while not a part of the Group's official charge, would also help the State meet the goals established by the Study Group, whether implemented independently or in conjunction with early voting.

The Study Group recommends that the changes to the absentee voting processes outlined in this report, which may be implemented without a pilot program, be enacted during the First Regular Session of the 123rd Legislature, and thus be in effect for the November 6, 2007, Referendum Election. As mentioned previously in this report, voter turnout at the referendum election is predicted to be significantly less than at the November 2008 Presidential Election. Allowing the municipal election officials to become familiar with these changes during an off-year election would help to ensure the integrity of the election process and be a great benefit to both the election officials and the voters.