

Security in Early Voting

Related to LD 580: Resolution, Proposing an Amendment to the Constitution of Maine Regarding Early Voting

Fair and free elections are the cornerstone of our democracy. In Maine and across the country, election administrators have continuously dedicated themselves to protecting election integrity to ensure voter confidence in the accuracy and credibility of our elections remains intact.

Early Voting Pilot Program in Maine

In 2005, the 122nd Maine Legislature directed the Secretary of State to design a pilot program for early voting.¹ One of the recommendations that resulted from the program related to an Early Voting Plan that would detail security measures to be implemented.² These security measures “left final policy decisions . . . to each municipality,” but in general included measures such as:

- ***Secured area (closet or vault) only accessibly by the municipal clerk.*** Any materials or machines/technology (tabulators, etc.) used to carry out voting would be put in a locked area when not in use;
- ***Description of the methods the municipality will utilize to detect any tampering.*** This included stickers or seals and certificates with the signatures of appropriate election officials; and
- ***Plan to ensure prevention of early release of election results.*** Under this, the clerk would be charged with preventing tabulation of election results prior to Election Day.³

Following the initial 2007 report, a successful early voting pilot was conducted in Bangor, Portland, and Readfield in 2009.⁴ Each pilot municipality had to complete and submit the *Uniform Security Procedures* document, initialing each section to indicate compliance with each security requirement. A sample of the *Uniform Security Procedures – Machine Municipalities* document is found in *Appendix B* of this report. The security procedures detailed:

- ***Minimum staffing requirements*** to assure that ballots and other voting materials were attended by at least two people at all times during Early Voting;
- ***Audit and reconciliation requirements*** to verify the number of ballots put into the tabulating machine equaled the number of names entered on the list of voters who cast ballots each day;
- ***Security requirements*** for storing the optical scan tabulating systems, and voted and unvoted ballots after each day of Early Voting; and
- ***Tracking requirements*** provided by entering early voters’ information into the Central Voter Registration system (CVR).⁵

2020 Election in Maine

¹ See Attachment A – “Report and Pilot Program for Early Voting, Prepared for the 123rd Maine Legislature Pursuant to the Resolves of 2005, Chapter 70, Apr. 01, 2007.

² *Id.* at 29-30.

³ *Id.*

⁴ See Attachment B – Report on the November 2009 Pilot Program for Early Voting, Prepared for the 124th Maine Legislature, Jan. 15, 2010.

⁵ *Id.* at 8.

For each election since early processing of absentee ballots has been allowed, our Division of Elections issued security procedures for municipalities that opted to process their absentee ballots prior to election day.⁶ There are other security procedures in Maine election laws that apply to election day voting. No breaches of protocol or security were reported, and Mainers can be confident that our 2020 elections were secure and accurate. Additionally, according to members of the Elections Infrastructure Government Coordinating Council (GCC) and the Elections Infrastructure Sector Coordinating Council (SCC), there was “no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised” during the 2020 Presidential Election.⁷

Early Voting in Other States

According to the National Conference of State Legislators (NCSL), approximately 20 states, including the District of Columbia – all from diverse political backgrounds – allow for early voting.⁸ It is important to note there is some confusion regarding NCSL’s analysis of early voting, as they seem to conflate absentee voting as a form of early voting. We have endeavored to separate out those that vote absentee from those that have early voting in the attached table (attachment c).

Timeframe for early voting varies but many states allow for early voting at least 30 days before election. Common practices amongst states paralleled Maine’s current protocols such as: use of secure locations for equipment and ballots during the period of early voting; staffing requirements, such as having election officials conduct procedures in pairs; and utilizing methods to confirm voter information, such as comparing each voter’s signature from registration to the ballot. Included in appendix c is a table detailing some security procedures for those states identified by NCSL as engaging in early voting.

⁶ See Attachment C - *Fact Sheet on Early Processing of Ballots*.

⁷ Cybersecurity and Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council and the Election Infrastructure Sector Coordinating Executive Committees*, Nov. 12, 2020, <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

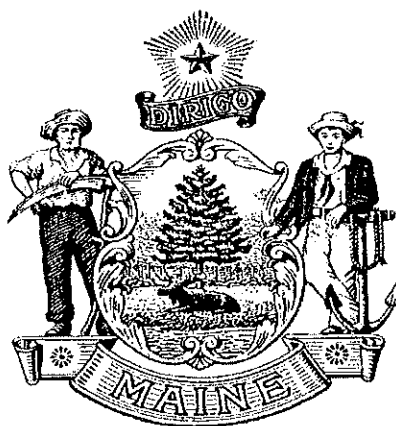
⁸ See Attachment D – *Early Voting in Other States*.

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Report and Pilot Program for Early Voting

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

April 1, 2007



*Prepared by the Department of the Secretary of State
Secretary of State Matthew Dunlap*

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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.

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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.

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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

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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.

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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
- 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

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.

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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.

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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

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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")*

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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

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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”)

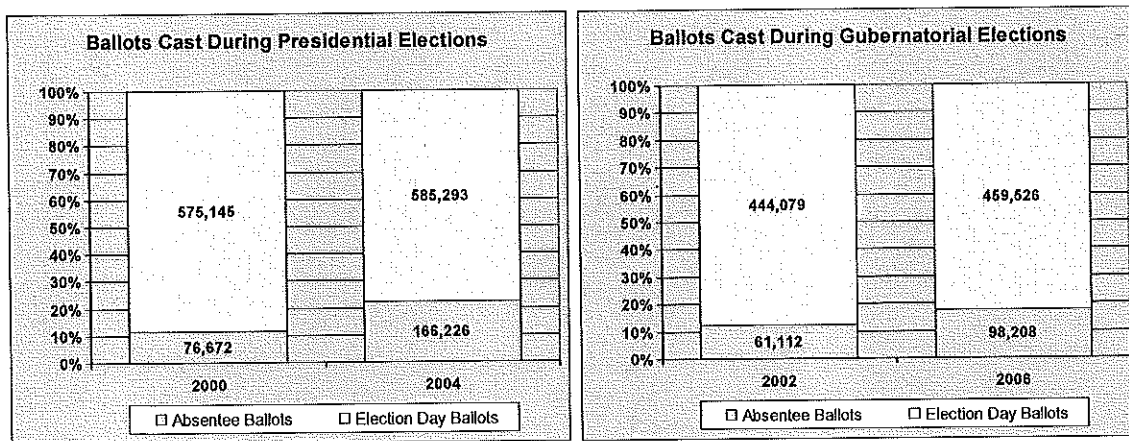
One issue that emerged from a conversation with state election officials in Maryland was the successful legal challenge to that state’s recently enacted early voting law, based upon language in Maryland’s State Constitution. This information led the Study Group to request that Phyllis Gardiner research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

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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.

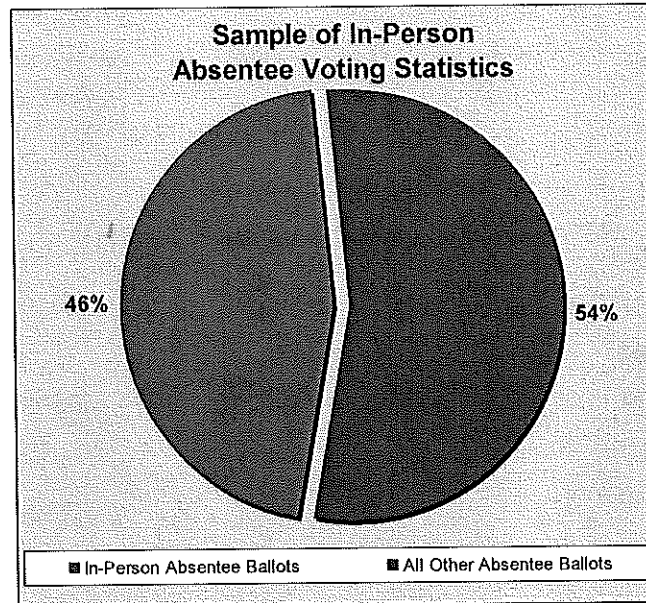
At the same time, many municipal clerks are finding the absentee voting process more and more difficult to maintain. The survey of municipal clerks highlights the concerns of limited staff, limited hours and the challenges of processing large numbers of absentee ballots on Election Day while the clerks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

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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.

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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.

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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

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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.

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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.

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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.

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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.

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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

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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.

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- 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.

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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.

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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.

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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.

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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.

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- 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

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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.

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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.

ATTACHMENT B

***Report on the
November 2009 Pilot Program for Early Voting***

*Prepared for the 124th Maine Legislature
January 15, 2010*



*Prepared by the Department of the Secretary of State
Secretary of State Matthew Dunlap*

ATTACHMENT B

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I. EXECUTIVE SUMMARY

In the fall of 2009, the State of Maine conducted its second successful pilot of the Early Voting process in a Referendum election. The 2009 pilot, expanded to include nine municipalities, was a tremendous success (as documented in this report with survey results and analysis). Nearly 13,000 voters and the municipal election officials from the nine pilot municipalities enthusiastically embraced Early Voting. Early Voting was again shown to provide convenience and ease of access to voters, while at the same time alleviating some of the demands on municipal election officials as they contend with processing increasing numbers of absentee ballots.

Both the State and the participating municipal election officials are confident that this process can be successfully implemented for other elections. However, as noted in this report and earlier reports, there are Constitutional issues, regarding implementation of Early Voting in candidate elections, which should be resolved prior to adopting an Early Voting process in statute.

If the Legislature wishes to proceed down a path of implementing Early Voting, then the next step would be to send to the voters an amendment of Article II, section 4 of the Maine Constitution. This amendment, if approved by the voters, would not adopt Early Voting as a method of voting in future elections, it would simply authorize the Legislature to do so by enacting an implementing statute. The Legislature would then be able to scrutinize the pilot program procedures more closely, and determine the best statutory framework for implementing Early Voting as an accepted voting method for any statewide elections.



II. BACKGROUND

The issue of Early Voting 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. Absentee voting had nearly doubled from about 11% of total ballots cast in the 2000 Presidential Election, to almost 22% in 2004. Clerks reported feeling overwhelmed by the preparations for, and the processing of, absentee ballots during Election Day 2004. (Note: By the 2008 Presidential Election, absentee voting comprised over 32% of the total ballots cast.) The original proposal directed the Secretary of State to design a process that would allow municipalities to permit voting at a voting 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 expressed concern about the original proposal, 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 would be an absentee ballot processing and tracking module. Prior to the implementation of CVR, most municipalities did not have an electronic system that facilitated tracking and reporting on absentee ballots issued and received. The Secretary of State's Office believed that the CVR would provide a way that all municipalities could track ballots cast through the 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 was implemented, the office would need to design appropriate procedures to ensure that voters would have the opportunity to cast only one ballot; to ensure that the public would have an opportunity to observe the process and challenge early ballots, the same as they would absentee or Election Day ballots; and to ensure that cast ballots would be safeguarded until they were counted. Finally, the office recommended that there should be a pilot program conducted in at least one municipality to verify that all potential issues were 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.

Summary of 2007 Study Report on Early Voting

In 2006, the Secretary of State established the Early Voting Study Group to analyze the process of Early Voting and identify the factors to be considered when conducting a pilot program in Maine. The Study Group submitted its report to the 123rd Legislature, entitled *Report and Pilot Program for Early Voting*, on April 1, 2007. This report is found at the following link on the Secretary of State's website:

www.maine.gov/sos/cec/elec/voter_info/early-voting-report-2007.doc



In the report, 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 the voter’s municipality, in the same manner as on Election Day. The Study Group recommended a plan for conducting a pilot and raised statutory and constitutional issues needing consideration prior to full implementation of Early Voting.

The Study Group also recommended, and the Legislature adopted, legislation to allow municipalities the option to process absentee ballots on the day prior to Election Day. This optional process has been used successfully by many municipalities since 2007.

Summary of 2008 Report on the November 2007 Pilot Program for Early Voting

The 123rd Legislature authorized an Early Voting Pilot to be conducted at the November 6, 2007, Referendum Election. The Secretary of State submitted a report of the pilot, entitled *Report on the November 2007 Pilot Program for Early Voting*, on February 25, 2008. The 2008 report is found at the following link on the Secretary of State’s website:

www.maine.gov/sos/cec/elec/voter_info/early-voting-2008.doc

The pilot, conducted in three municipalities - Bangor, Portland and Readfield – was a tremendous success. Over 1,800 voters and the municipal election officials from the three pilot municipalities enthusiastically embraced Early Voting, as demonstrated by the results of surveys completed by the participating voters and reports from election officials in the pilot municipalities. Early Voting was shown to provide convenience and ease of access to voters, while at the same time alleviating some of the demands on municipal election officials as they contend with processing increasing numbers of absentee ballots.

As a result of this success, the Secretary of State recommended taking the necessary steps for adoption of Early Voting. To resolve a potential issue with Article II, section 4, of Maine’s Constitution, the Secretary of State recommended that a Constitutional Amendment question be placed on the November 4, 2008, General Election ballot.

Based on the Secretary of State’s *Report on the November 2007 Pilot Program for Early Voting*, the 123rd Legislature proposed a Constitutional Resolution during the Second Regular Session, although Resolution did not receive the two-thirds vote necessary to send the measure to the voters in November 2008.



III. INTRODUCTION

The 124th Legislature, in the First Regular Session, enacted Chapter 24 of the Resolves of 2009, entitled *Resolve, Directing the Secretary of State To Conduct a Pilot Program for Early Voting for the November 2009 Election*. This Resolve directed the Secretary of State to administer a pilot program that would allow selected municipalities to conduct early voting at voting places up to 10 days prior to Election Day, November 3, 2009.

The Secretary of State was authorized to select the municipalities to participate in the program, subject to the consent of the municipal clerks. The Resolve further provided that the Secretary of State, in administering the early voting program, would use the findings of its April 1, 2007, *Report and Pilot Program for Early Voting* and February 25, 2008, *Report on the November 2007 Pilot Program for Early Voting*, as well as best practices used by other states that have early voting laws.

Additionally, the Resolve directed the Secretary of State to submit a report by January 15, 2010 to the Joint Standing Committee on Legal and Veterans Affairs detailing the results of the pilot program. In compliance with the Resolves of 2009, Chapter 24, the Secretary of State submits this *Report on the November 2009 Pilot Program for Early Voting*.



IV. DESCRIPTION OF THE 2009 EARLY VOTING PILOT

Designing the Pilot

The Secretary of State, in designing and conducting the early voting program for 2009, relied heavily on the information gathered for the April 1, 2007, *Report and Pilot Program for Early Voting*. This office also utilized the Early Voting Plans, Uniform Security Procedures and forms and processes developed for the 2007 Early Voting Pilot (as included in the February 25, 2008, *Report on the November 2007 Pilot Program for Early Voting*), with some enhancements suggested by the participating municipalities.

Participating Municipalities

Nine municipalities expressed an interest in participating in the pilot and were selected as the pilot municipalities. A list of these municipalities, along with the number of active status registered voters as of December 2009, is provided below. These municipalities all use optical scan tabulators to count their paper ballots.

Name of Pilot Municipality	Number of Active Voters
Augusta	14,026
Bangor	21,810
Cumberland	5,655
Falmouth	8,694
Gorham	11,884
Hallowell	2,117
Saco	13,504
Scarborough	14,796
Standish	7,221

Early Voting Plans

In the fall of 2009, the municipalities who wished to participate in the pilot had to complete and submit an *Early Voting Plan*, which detailed the location and hours of Early Voting for their municipality. A sample of the *Early Voting Plan for Optical Scan Municipalities* is found in *Appendix A* of this report. The *Early Voting Plan* included two main components, as follows:

- 1. The schedule for Early Voting.** The early voting period extended from Monday, October 26th through Saturday, October 31st, plus Monday, November 2nd. The nine municipalities indicated in their *Early Voting Plan* which of these days and what hours they would offer Early Voting. This allowed the participating municipalities the flexibility to determine the schedule that would work best for them.



2. **The location for Early Voting.** Each municipality had to choose a single location for Early Voting that was available for the entire Early Voting time, was of adequate size to handle estimated turnout, and was accessible to people with disabilities.

Uniform Security Procedures

Each pilot municipality also had to complete and submit the *Uniform Security Procedures* document, initialing each section to indicate compliance with each security requirement. A sample of the *Uniform Security Procedures – Machine Municipalities* document is found in *Appendix B* of this report. The security procedures detailed:

1. **the minimum staffing requirements** to assure that ballots and other voting materials were attended by at least two people at all times during Early Voting;
2. **the audit and reconciliation requirements** to verify the number of ballots put into the tabulating machine equaled the number of names entered on the list of voters who cast ballots each day;
3. **the security requirements** for storing the optical scan tabulating systems, and voted and unvoted ballots after each day of Early Voting; and
4. **the tracking requirements** provided by entering early voters' information into the Central Voter Registration system (CVR).

General Pilot Program Procedures

The Secretary of State created a set of general procedures for pilot municipalities to use as guidance for conducting Early Voting. A sample of the *Early Voting Pilot Program Procedures (Machine Ballots)* is found in *Appendix C* of this report. This document, along with the training guides provided to all municipalities for conducting an election, assisted the pilot municipalities in carrying out their Early Voting duties in a uniform manner. The Secretary of State, in consultation with the pilot municipalities, reviewed and revised the forms used for the 2007 pilot program, so that each pilot municipality used the same forms for tracking and auditing the 2009 pilot.

The procedures used for Early Voting were essentially the same as on Election Day. The provisions for Election Day activities found in Title 21-A, Maine Law on Elections, governed the process. Some of these laws include: the provisions for political activities at the voting place, petitioners, poll watchers, candidates and challenges. Early voters who were not already registered were allowed to register and vote (either a regular ballot or, if the voter could not provide sufficient proof of identity or residency, a challenged ballot) just as they would on Election Day.

Voters were checked in before voting, using an Incoming Voting List produced from the Central Voter Registration System (CVR). Voters did not have to complete an application form; instead, they were asked to enter their name, address and signature on a printed log form. Municipal election officials were required to enter into the CVR the information on voters who cast an early ballot, much like they would do for in-person absentee voters. There were no programming changes made to the CVR to accommodate Early Voting. However, early voted ballots were coded using the designation "state blank absentee ballots", which is a code in CVR



that is not used for Referendum elections. This allowed the municipalities to distinguish between in-person absentee ballots and early voted ballots and obtain a separate report of those voters who cast a ballot during the Early Voting process.

Each municipality also had an accessible voting device available in the Early Voting area, to ensure that voters with disabilities had an opportunity to cast an early voted ballot with privacy and independence, as required by the Help America Vote Act of 2002 (HAVA).



V. ANALYSIS AND CONCLUSIONS

Election Official Perspective

The State and pilot municipality election officials are in agreement that the 2009 Early Voting Pilot was a successful venture. As with the 2007 pilot, Early Voting was shown to provide convenience and ease of access to voters, while at the same time alleviating some of the demands on municipal election officials as they contend with processing increasing numbers of absentee ballots. The total of early votes cast was 12,970, as compared with 1,844 early votes cast in the 2007 pilot. The chart below details the number of early votes cast each day by municipality.

Municipality	10/26/09	10/27/09	10/28/09	10/29/09	10/30/09	10/31/09	11/2/09	Total
Augusta	132	153	175	206	261	N/A	561	1488
Bangor	345	535	393	576	626	196	956	3627
Cumberland	74	96	156	222	N/A	195	366	1109
Falmouth	65	99	166	285	N/A	142	537	1294
Gorham	68	91	192	221	240	136	N/A	948
Hallowell	N/A	N/A	N/A	58	63	N/A	88	209
Saco	67	89	141	230	292	112	501	1432
Scarborough	128	192	335	285	416	N/A	632	1988
Standish	86	75	176	183	N/A	N/A	355	875
Total	965	1330	1734	2266	1898	781	3996	12970

This pilot provided a wealth of useful information on how best to administer early voting in a larger number of municipalities. However, both the State and municipal election officials agreed that changes to the general program procedures or specific security procedures used in this pilot should be considered only if the Legislature and the voters determine that they wish to adopt Early Voting as an authorized voting method.

Voter Perspective

Along with their ballots, voters opting to participate in Early Voting were provided with a survey designed to help policy makers and administrators evaluate the pilots. This survey was copied from the one used in 2007, except that one new question was added, which read: "Would you like to have this Early Voting option available in future elections?" A copy of the survey form is found in *Appendix D* of this report.

Across all nine municipalities 12,970 citizens – approximately 23% of those who voted in that election in those municipalities – participated in the pilots, casting their ballots early. Of those voters, 12,060, or 93%, returned their survey forms (fully or partially completed). Responses indicate that the pilots were successful and, generally, enthusiastically embraced by those participating. Responses also offer valuable insight on why voters participated, what they liked or disliked and how any future Early Voting efforts can enjoy the same or greater success.



Survey responses revealed several interesting trends. While citizens chose to early vote in significant numbers throughout all available days and times, the peak voting days were the Thursday, Friday and Monday preceding Election Day; and the peak voting hours were late morning (10-12) followed by late afternoon (2-4).

Voters were asked "How did you hear about Early Voting?" and were encouraged to select all options that applied. Nearly one-third (32%) of voters indicated they had heard of Early Voting by newspaper and nearly the same number had heard of Early Voting on television (32%). Other significant sources of public awareness included: friends and family (22%), municipal official (11%), radio (9%), municipal website (6%) and road signs, posters, and other signs (5%).

Perhaps most interesting, voters were asked to indicate "Why did you choose Early Voting?" and were encouraged to select all options that applied. More than two-thirds of voters cited "convenience to my schedule" as a reason for voting early. Nearly 1 out of 10 voters indicated they were going to be "away on Election Day". Additionally, nearly 4 out of every 10 voters indicated that a desire to "avoid the polls on Election Day" was one of the reasons they chose to vote early.

Although small in numbers, it is worth noting that of those selecting "Other": 42 cited mobility issues or other disabilities causing an aversion to lines or crowds and therefore a preference for Early Voting; 37 others also referenced a desire to avoid crowds and lines; 15 referenced a desire to avoid petitioners or candidates; 25 were either poll workers or campaign workers; 25 preferred the Early Voting location to their voting place; 73 were already at the Early Voting location for other business; 32 referenced a desire to be sure they did not miss the opportunity to vote and 22 referenced Early Voting to help a particular campaign.

Voters were asked to indicate "Would you like to have this Early Voting option available in future elections?" **An overwhelming 98% of voters (virtually 100% of those responding to this question) answered "YES," they would like this option in future elections.**

Nearly half of the survey respondents provided narrative answers to the question "What did you like about this Early Voting experience?", and repeated key themes of **convenience, the lack of or shortness of lines, the lack of waiting** and references to the process being **quick or fast**. Only 10% of survey respondents provided answer to the question "What would you like to see changed?". Of those responding to the question, two-thirds of the indicated that nothing needed to change, while one-quarter sought changes such as expanded Early Voting days and hours, increased publicity of Early Voting opportunities, refinements in the check-in process, and facility improvements.

The full summary of the survey responses is included in *Appendix E* of this report.

Constitutional Issues

As noted in the April 1, 2007 Study Group Report on the Pilot Program for Early Voting, there is a constitutional issue with regard to Early Voting that should be addressed if the Legislature wishes to adopt this as a practice for candidate elections statewide. The issue



concerns the following provision in Article II of Maine's Constitution on the timing of State candidate elections:

Section 4. Time of state election; absentee voting. The election of Senators and Representatives *shall be on the Tuesday* following the first Monday of November biennially forever and the election of Governor *shall be on the Tuesday* following the first Monday of November every 4 years. The Legislature under proper enactment shall authorize and provide for voting by citizens of this State and for voting by other citizens absent or physically incapacitated for reasons deemed sufficient. (Emphasis added).

By specifying that candidate elections for state offices "*shall be held on the Tuesday* following the first Monday in November," the Constitution does not appear to leave the Legislature the latitude to permit voting on any day but the Tuesday following the first Monday of November. Article II, section 4 clearly authorizes the Legislature to provide a system of absentee voting for those who are absent or physically incapacitated on Election Day, but Early Voting is a different concept.

Maryland's Early Voting statute was challenged on the grounds that it conflicted with a provision in that state's constitution similar to Maine's, and the Maryland Court of Appeals struck it down on those, as well as other, grounds. *Lamone v. Capozzi*, 912 A.2d 674 (Md. 2006). In essence, the court found that Maryland's Constitution recognized only two methods of voting – in person voting and absentee balloting – rejecting the argument that Early Voting was a form of absentee balloting since Early Voting was not limited to people who would be absent or otherwise unable to get to the polls on Election Day.

This appears to be the only court decision addressing this constitutional issue, and it is not binding precedent in Maine. Nonetheless, given the similarity of our state's constitutional provisions on the timing of candidate elections, Maine courts might well follow the reasoning of the Maryland Court of Appeals if an Early Voting statute were challenged here.

Next Steps

The State has now conducted two successful pilots of the Early Voting process in Referendum elections. Both the State and the participating municipal election officials are confident that this process can be implemented for other elections once the Constitutional issues are resolved, and an Early Voting process is adopted in statute. If the Legislature wishes to proceed down a path of implementation, then the next step would be to send to the voters an amendment of Article II, section 4 of the Maine Constitution. This amendment, if approved by the voters, would not adopt Early Voting as a method of voting in future elections, it would simply authorize the Legislature to do so by enacting an implementing statute. The Legislature would then be able to scrutinize the pilot program procedures more closely, and determine the best statutory framework for implementing Early Voting as an accepted voting method for any statewide elections.



Appendix A

Sample Early Voting Plan for Optical Scan Municipalities for the November 2009 Pilot Program



**Early Voting Plan for Optical Scan Municipality of _____
for the Pilot Program Conducted November 3, 2009**

Early Voting Facility:

- ▶ **Facility Name** _____
- ▶ **Physical Address of Facility** _____

Certifications of Clerk Regarding Early Voting Facility:

- ▶ **1. Size:** The facility is of adequate size to serve as a voting place pursuant to Title 21-A, section 627, and will be set up like a voting place on Election Day, as nearly as practicable. The space is also of sufficient size to allow the presence of at least one pollwatcher from each of the qualified parties, to provide an opportunity as permitted by law for observing the process, checking who has voted, and challenging.
- ▶ **2. Availability:** The facility is available for the entire early voting period as outlined in the schedule contained in this plan.
- ▶ **3. Physical Accessibility:** The facility meets the ADA accessibility requirements for a voting place.
- ▶ **4A. Accessible Voting:** A dedicated fax line is available within the guardrail enclosure at the facility to allow any voter to cast a ballot using the Accessible Voting System (AVS). The AVS will be set up and fully operational during the hours of early voting and the staff will be familiar with instructing and assisting a voter who requests to use the AVS.

or

- ▶ **4B. Alternative Plan for Accessible Voting:** A dedicated fax line is not available within the guardrail enclosure at the facility. Instead, the clerk proposes an alternative plan for accessible voting for consideration by the Secretary of State, which is attached to this early voting plan.

Schedule for Early Voting:

- | | |
|-------------------------------------|-----------------------|
| ▶ _____ Saturday, October 24, 2009 | Hours: _____ to _____ |
| ▶ _____ Monday, October 26, 2009 | Hours: _____ to _____ |
| ▶ _____ Tuesday, October 27, 2009 | Hours: _____ to _____ |
| ▶ _____ Wednesday, October 28, 2009 | Hours: _____ to _____ |
| ▶ _____ Thursday, October 29, 2009 | Hours: _____ to _____ |
| ▶ _____ Friday, October 30, 2009 | Hours: _____ to _____ |
| ▶ _____ Saturday, October 31, 2009 | Hours: _____ to _____ |
| ▶ _____ Monday, November 2, 2009 | Hours: _____ to _____ |

Staffing:

- ▶ _____ number (not less than 2) of Clerk staff/election officials will be working at all times during the early voting hours.

Security/Early Voting Procedures:

- ▶ As detailed in the "Early Voting Pilot – Uniform Security Procedures (Optical Scan Municipalities)".

Municipal Clerk signature: _____

Deputy Secretary of State signature: _____ **Date Plan approved:** _____



Appendix B

Sample Uniform Security Procedures - Machine Municipalities for the November 2009 Pilot Program



EARLY VOTING PILOT
Uniform Security Procedures – *Machine Municipalities*
for the November 3, 2009 Referendum Election

- 1. Early Voting Pilot Program (Overview). Initials of Clerk: _____**
 - 1.1.** Early Voting (EV) is a pilot program authorized by the Legislature for the November 3, 2009, Referendum Election only. (*see Resolves of 2009, Chapter 24*).
 - 1.2.** The Secretary of State determines the municipalities that can participate in the EV pilot program from among the municipality applicants who wish to offer this optional program.
 - 1.3.** Interested municipalities must apply to the Secretary of State, Division of Elections, by 5 p.m. on Friday, October 2nd; by submitting an *Early Voting Plan* and this *Uniform Security Procedures* form.
 - 1.4.** EV is conducted in a similar manner to Election Day voting, rather than in-person absentee voting. In fact, on the days and times that EV is offered by the approved participants, EV replaces in-person absentee voting at the clerk's office. The voter's marked ballot is cast (deposited into the tabulating machine/ballot box) and the vote tabulations accumulate in the memory of the tabulator. However, at the end of each day of EV, the tabulators must be secured as provided in this security document, and no vote totals may be obtained until after the polls have closed on Election Day and all absentee ballots have been processed.
 - 1.5.** Once the Secretary of State selects the participating municipalities, additional procedures and audit forms will be provided to each municipality. Participating municipalities agree to follow all required procedures, including those delineated in these *Uniform Security Procedures*.
- 2. Staffing requirements. Initials of Clerk: _____**
 - 2.1.** A minimum of 2 staff must be in attendance at all times during EV, when accessing the secure storage area for ballots, or when transporting voted or unvoted ballots between the secure storage area and the voting place.
 - 2.2.** The Clerk may designate municipal staff as election officials (Warden, Deputy Warden/Ward Clerk and election clerks) to conduct EV, or may use the election officials that were appointed for Election Day.
 - 2.3.** However, just like on Election Day, the requirements of 21-A MRSA section 503 shall apply; i.e. there must be a minimum of 1 Democrat and 1 Republican election clerk at all times during EV, and if more than 1 pair of election clerks is used, there must be a balance of the major party representation or no more than 1 additional election clerk from either major party.
- 3. Location for Early Voting. Initials of Clerk: _____**
 - 3.1.** The Clerk must designate a single location for EV.
 - 3.2.** The location must be of sufficient size to accommodate all necessary staff, ballot materials and the tabulating device(s) in one voting area, which must be surrounded by a guardrail enclosure similar to the one used on Election Day.
 - 3.3.** The location must accommodate public access, outside the guardrail enclosure, at all times during EV. At a minimum, the public area outside the guardrail enclosure must be large enough to accommodate at least one pollwatcher from each of the qualified parties.
 - 3.4.** The Clerk must ensure that the location for EV meets all the required certifications on the *Early Voting Plan*, and must designate which option will be used for providing the Accessible Voting System (AVS) during EV.



4. **Use of official tabulator; audit requirements. Initials of Clerk:** _____
- 4.1. The Clerk must provide an official tabulating machine/ballot box for use in EV. (*Please see section 5 regarding the options for EV based on the number of tabulators and memory cards.*)
- 4.2. After the Clerk has completed the pre-election testing, the Clerk must apply a numbered seal to the compartment where the memory device is inserted, and record the seal number on the "Audit Log for Early Voting (Optical Scan Ballots)" log form.
- 4.3. Before beginning the first day of EV, the Clerk/Warden must produce a "Zero" tape and verify that the public counter on the machine reads zero.
- 4.4. Before beginning each day of EV, the Clerk/Warden and 1 other staff must open each compartment of the tabulating machine/ballot box, to show publicly that it is empty; re-lock the compartments; and secure the key until EV is completed.
- 4.5. At the end of each day of EV, the Clerk/Warden must record the public counter number on the "Audit Log for Early Voting (Optical Scan Ballots)" log form. (Note: if more than one ballot was issued to each voter, the counter number must be divided by the number of ballots issued to each voter to obtain the correct number of votes cast.) The Clerk/Warden must ensure that no tally tape of results is generated until after the polls close on Election Day and all voters have voted and all absentee ballots have been processed through the machines.
- 4.6. The number of early voters, designated on the CVR List of Absentee Voters as having their ballots cast in person during early voting, must be recorded on the "Audit Log for Early Voting (Optical Scan Ballots)" log form. Any discrepancy between the number of ballots cast and the number of voters recorded in CVR also must be noted on the log. Further instructions will be provided to participating municipalities along with the applicable audit forms.
5. **Options for processing based on the number of tabulators and memory cards. Initials of Clerk/Option Selected:** _____
- 5.1. **Option 1. Use of 2 tabulators and 2 memory cards/devices.** If the municipality has at least 2 tabulators, the Clerk must test each memory card/device and seal it into its own tabulator. One tabulator will be used for EV, while the second tabulator will be secured for use on Election Day. After EV is completed, the officials must verify that each compartment of the tabulating machine/ballot box used for EV is empty, and make it available for early processing of absentee ballots (if the municipality opts to do so) and/or for processing additional absentee ballots on Election Day. The optical scan tabulating machine must be unplugged and placed in a vault, or other locked and secure location, to which only the Clerk and the Clerk's designees have access. The memory card/device must remain sealed in the machine. The machine may be removed from the secure storage area and used on Election Day to process any absentee ballots that were received after the start of early processing and through 8 p.m. on Election Day. The Clerk will transport the second tabulator, with its own, sealed memory card/device, to the voting place and use it for Election Day voting according to the usual procedures. **OR**
- 5.2. **Option 2. Use of 1 tabulator with 2 memory cards/devices.** If the municipality only has 1 tabulator, but has at least 2 memory cards/devices, the municipality still may conduct EV by following the procedures in this section. The Clerk must test both memory devices, and seal 1 of the memory devices in the tabulator for EV, and secure the other memory device until Election Day. After EV is completed, the officials must verify that each compartment of the tabulating machine/ballot box used for EV is empty, and remove the memory device from the tabulator and secure it until after the polls close on Election Day. The Clerk then must seal the 2nd memory device into the tabulator, and place the tabulator in a vault, or other locked and secure location, to which only the Clerk and the Clerk's designees have access. The Clerk will remove the tabulator from the secure storage area and will



transport the tabulator to the voting place to be used for Election Day voting according to the usual procedures. The Clerk will transport the memory device used for EV to the voting place and keep it until after the polls have closed and the tally tapes have been printed from the Election Day memory device. Any absentee ballots that were received after the start of early processing and through 8 p.m. on Election Day, must either be processed at the voting place during Election Day using the Election Day memory device, or must be processed after 8 p.m. using the memory device used for EV. After all Election Day voters have voted, the Warden will remove the Election Day memory device from the tabulator, insert the memory device that was used for EV, and print the tally tapes reflecting the EV ballots. The Warden will complete the tally sheets and Return of Votes Cast, including tallies from both memory devices.

6. Election procedures (generally). Initials of Clerk: _____

- 6.1. The procedures for EV are the same as provided in Title 21-A for Election Day (§671, §672).
- 6.2. The requirements for challenging of ballots and pollwatching are the same as provided in Title 21-A for Election Day. (§673, § 681)
- 6.3. The Clerk/Warden must complete the "Warden's Log of Opening the Ballot Box", using the same process that is followed on Election Day, before any processed ballots may be removed or compressed.

7. Securing voted ballots from the fully counted bin of the tabulator. Initials of Clerk: _____

- 7.1. At the end of each day of EV, ballots must be removed from the tabulator bin, without reviewing any votes cast. The officials must immediately place the ballots in one or more tamper-proof containers, labeled "Fully Counted EV Ballots - 11/3/09 Referendum Election". Each container must be locked and sealed in the same manner as required for voted materials on Election Day.
- 7.2. A Certificate of Sealed Ballot Container must be completed, designating each container of early voted ballots.
- 7.3. The locked and sealed tamper-proof containers must be placed in a vault, or other locked and secure location, to which only the Clerk and the Clerk's designees have access. As long as there is no malfunction in the tabulator that results in the ballots having to be reprocessed, these containers must be kept in the secure storage area and must not be taken to the polls, and must not be opened or have ballots removed either until a recount occurs or the time for retention of ballots in the tamper-proof containers has passed.

8. Securing voted ballots from the auxiliary and/or the unread/not fully counted bin of the tabulator. Initials of Clerk/ Option Selected: _____

- 8.1. **Option 1. Seal in tamper-proof containers.** At the end of each day of EV, ballots must be removed from the tabulator bin, without reviewing any votes cast. The officials must place the ballots in one or more tamper-proof containers that are labeled "Unread/Not Fully Counted EV Ballots - 11/3/09 Referendum Election". Each container must be locked and sealed and the information recorded on a Certificate of Sealed Ballot Container.
 - **The locked and sealed tamper-proof containers of unread/not fully counted ballots** must be placed in a vault, or other locked and secure location, to which only the Clerk and the Clerk's designees have access. On Election Day, the Clerk, along with another staff, must transport the tamper-proof containers of unread/not fully counted ballots to the voting place. The containers must remain within the guardrail enclosure, in view of all persons present, during Election Day, until the polls close.
 - After the polls have closed on Election Day, and after all voters have voted and all absentee ballots have been processed into the ballot box, the Clerk/Warden must verify that the seal/lock on each tamper-proof container (**of unread/not fully counted ballots from EV**) matches the ones recorded on the



Certificate of Sealed Ballot Container. The Clerk/Warden must then open these tamper-proof containers and remove the ballots to determine voter intent and hand-count and tally the unread ballots according to the Uniform Counting Procedures provided by the Secretary of State.

- 8.2. Option 2. Seal in labeled envelope in not fully counted bin.** At the end of each day of EV, ballots must be removed from the tabulator bin, without reviewing any votes cast. The officials must place the ballots in a large envelope, seal and date the envelope and place the envelope back in the not fully counted bin of the tabulator. The clerk must then close and lock the bin and apply an approved tape seal over the locking mechanism. The optical scan tabulating machine must be unplugged and placed in a vault, or other locked and secure location, to which only the Clerk and the Clerk's designees have access.

9. Designating Early Voters on the Incoming Voting List. Initials of Clerk: _____

The Clerk or Registrar must enter each early voter's information into the absentee module of the CVR as voted in person, select the "Ballot Request Type" as "State Blank Absentee Ballot". Each voter who has had an early ballot designated as accepted in the system will have an "AV" printed on the Incoming Voting List beside the voter's name. All entries must be made before the Incoming Voting List is printed. Additional instructions will be provided to participating municipalities.



Appendix C

Sample Early Voting Pilot Program Procedures (Machine Ballots) for the November 2009 Pilot Program



November 3, 2009 Referendum Election Early Voting Pilot Program Procedures (Machine Ballots)

1. Prior to the Start of Early Voting

- Set up the Early Voting (EV) location in a similar manner to Election Day, enclosed within a guardrail that is at least 6 feet from the voting booths, AVS station and tabulating machine/ballot box, including the following:
 - a sufficient number of voting booths to handle the expected flow of voters;
 - the AVS voting station;
 - the tabulating machine(s) to be used for accepting EV ballots;
 - an incoming check in table that is just inside the guardrail or forms part of the guardrail enclosure; and
 - meet any other requirements for voting place set up.
- Post all posters and instructional materials, as required by law, inside each voting booth and outside the guardrail.
- Set up a table outside the guardrail for the Registrar or Deputy Registrar to process new voter registrations and changes, including the following items:
 - voter registration applications;
 - Certificates of Voter Registration;
 - a current copy of the *Alpha Voter List* for lookup purposes if CVR is unavailable; and
 - a computer with access to CVR (for entering early voter information and looking up voters).
- Print a current copy of the *Incoming Voter List* for use at the check-in table for the entire period of Early Voting; the list may be separated in alpha segments by voters' last names, to facilitate check-in at more than one check-in line.

2. Start each Early Voting Day with

- **Incoming Voter List** - verify that the *Incoming Voter List Certification* applied the previous day is intact before opening and using the list.
- **Unvoted ballots** - verify that containers of ballots received from the printer either have not been opened or that the *Certificate of Sealed Ballot Container for Unused State Ballots* applied the previous day is intact and that all ballots inside are sealed in shrink wrap, and loose ballots are unvoted.
- **Machine Ballot Box** - verify that all compartments are empty (except if you are placing unread ballots in envelopes and sealing them into the "Not Fully Counted" compartment of the ballot box – then the compartment should contain sealed envelopes of unread ballots from prior days.
- **Machine(s)** - verify machine (public) counter number and record on *Machine Verification* form; and verify that the seal number on the memory pack/card in the back of the machine, that was recorded on the *Audit Log for Early Voting* at the start of the Early Voting period, has not changed.
- Voter Registration materials (as indicated in #1 above).
- Fill out *Early Voting Opening Checklist (Machine Ballots)* form.

3. Voting Place Activities

- Regulations are identical to Election Day for candidates, poll watchers, petition signature gatherers, etc.; please be prepared to accommodate these activities.



4. Entry of Voter Information into CVR

- Enter information into the CVR immediately, in this order:
 - choose the election;
 - check the “Select if Voted in Person” checkbox; and
 - go back to the “Ballot Request Type” field and select “State Blank Absentee Ballot”; then save at the bottom. (If you don’t do the steps in this order, the system will not let you save a “State Blank Absentee Ballot” as “Voted in Person”).
- **Note:** if CVR is down, check Alpha Voter List to verify voter information, then enter into CVR ASAP using the information entered at check-in into the *Log of Early Voters*.
- If the voter is not registered or requires an update of their information, process the new voter registration or update. Give new voters or voters who have changed voting districts a Certificate of Voter Registration to use at check-in.
- Allow voter to proceed to check-in and vote.

5. Check Voters off on Incoming Voter List; complete *Log of Early Voters*; obtain signature

- Check off each voter on *Incoming Voter List* (IVL) as s/he enters the voting area, write EV next to the voter’s name (rather than a line or check mark) in red ink.
- The ballot clerk fills out the *Log of Early Voters* by neatly printing the voter’s name and address.
- The ballot clerk asks voter sign the *Log of Early Voters* on the same line as their name & address.
- If voter is not on the list, collect the Certificate of Voter Registration; manually add the voter’s name, address and district information to the IVL (either on the applicable page itself or on blank pages that you have provided at the end of each letter); and mark “EV” next to the hand-written name.
- Give the voter the appropriate ballot(s) and direct them to the voting booth.
- Give the voter the *2009 Early Voting Survey* to complete. Have the voter place the completed survey in the drop box provided when they are done voting.

6. At closing

- **Secure** unvoted ballots - in cardboard box(es) & seal using a signed *Certificate of Sealed Ballot Container for Unused State Ballots* form over the opening of the box flaps.
- **Secure** IVL - in envelope & seal using a signed *Incoming Voter List Certification* form.
- **Secure** voted ballots - in blue tamper-proof boxes (state ballots only), lock & seal and complete a *Certification of Sealed Ballot Container* (2-part form also used on Election Day), adding the date of Early Voting next to each line.
- **Secure** auxiliary and unread ballots – remove from applicable ballot box compartment and place ballots in an envelope; have workers complete and sign the *Certificate of Sealed Envelope for Auxiliary and Unread Ballots*, indicating the number of auxiliary/unread ballots being secured in the envelope; seal the envelope using this certificate; and either:
 - place the envelope in the “Not Fully Counted” bin of the ballot box; lock the box and place security tape over the lock, OR
 - place the envelope in a tamper-proof container, lock and seal the container and complete a *Certification of Sealed Ballot Container*, adding the date of Early Voting next to each line.
- **Secure** machine - note machine (public) counter total on the on *Machine Verification* form, & seal number for memory pack/card on *Audit Log for Early Voting (Machine Ballots)* form.
- Return completed voter registration cards to Registrar.
- Fill out *Early Voting Closing Checklist*.
- Fill out *Machine Verification* form.
- Ballots from multiple days may be secured in the same tamper-proof container, by:



- having workers verify the seal is the same as the one affixed at the end of the prior day;
- breaking the seal and opening the lock;
- adding the ballots cast during that day of Early Voting;
- affixing a new seal and re-locking the tamper-proof container; and
- recording the new seal on a *Certification of Sealed Ballot Container* form.

7. General Security Procedures

- As per the Security Plan document, the requirements for workers must comply with Title 21-A section 503, requiring at least 1 Democrat and 1 Republican worker during the entire Early Voting process. You may use actual election clerks or designate municipal staff in those roles.
- D & R attest to machine count, and secure voted & unvoted ballots, & IVL.
- D & R ensure seals, locks, etc. at opening are as they were at closing on the previous day.
- The Municipal Clerk/Warden will provide for secure transport of Early Voting materials between the Early Voting area and the Clerk's secure storage area.
- All secured materials will be locked in the Clerk's secure storage area at the conclusion of Early Voting each day.
- Full containers of voted ballots, which will be locked & sealed in tamper-proof containers, will be placed in secure storage and will remain there until after the ballot retention period elapses (unless a machine malfunction requires the ballots to be re-fed into the machine).
- Auxiliary and unread ballots that have been sealed in envelopes and will remain in the "Not Fully Counted" bin of the ballot box or in the tamper-proof containers (depending on option chosen for storage of these ballots) until the end of Early Voting, when they will be sealed in tamper proof box(es) and put in the secure storage until Election Day. These will be transported to the central processing location or voting place (as applicable) for the final processing and tallying to take place at the close of the polls on Election Day.
- If applicable, machines from Early Voting will be delivered to the central absentee processing location on Election Day, for obtaining the tally tapes at the close of the polls.

8. Audit Log for Early Voting (Machine Ballots)

- After all early voters have been entered into the CVR, print the *List of Absentee Voters* report from CVR, selecting "State Blank Absentee Ballots" and the date of Early Voting as the date issued and received. This will provide an alphabetical list of all early votes entered in that day.
- Obtain the number of voters who cast early votes that day, and put that number in Column B on the *Audit Log for Early Voting (Machine Ballots)* form.
- In Column A of the form, take the ending machine count for today and subtract the beginning machine count for today, then add any auxiliary ballots to determine the total ballots cast for today. Note: if you have more than one ballot, divide the total by the number of ballots to determine the number of actual voters.
- Subtract the number in Column B from the number in Column A of the *Audit Log* and enter it into Column C, date and initial each day. If there is a discrepancy of 5% or more of the lower number in Column A or B, then the clerk must check the *List of Absentee Voters* for that day against the *Log of Early Voters* who have been designated as voting that day, to resolve the discrepancies.
- A copy of the *Audit Log for Early Voting (Machine Ballots)* must be faxed each day to the Secretary of State (Division of Elections) at 287-5428.



9. On Election Day

- Absentee ballots will be processed either at a central location or at the voting place on Election Day as designated in the Notice of Election.
- At the close of the polls on Election Day, the machines that have counted the Election Day votes and absentee ballots (if processed at the polls) will be totaled and the auxiliary and unread votes will be hand tallied, and a Return of Votes Cast will be produced.
- After all absentee ballots have been counted, sorted & sealed (if processed centrally) and all paperwork is completed, the totals from the absentee and Early Voting ballots will be processed at the voting place, by totaling out the machines that have been used for Early Voting and central processing of absentee ballots, & hand tallying auxiliary and unread ballots from the tamper-proof containers from Early voting, and a Return of Votes Cast for "Central Voting" will be produced.
- Alternatively, the totals from the centrally processed absentee ballots and/or early voted ballots may be added together with the results from the voting place, and combined into one Return of Votes Cast for the municipality.

Revised 10/09



Appendix D

Sample 2009 Early Voting Survey - Augusta for the November 2009 Pilot Program

**2009 EARLY VOTING SURVEY – AUGUSTA**

Voting today is part of Maine's 2009 Early Voting Pilot Program. Please take a moment to answer the important questions on this **private and confidential** survey to help us learn how we may provide the best voting experience.

Early Voting is different from in-person Absentee Voting, in that the voter places the ballot directly into the ballot box or tabulating machine, instead of sealing it in a signed envelope for later processing on Election Day. Early Voting is designed to supplement the existing Absentee Balloting process, rather than be a replacement for it. Complete definitions of the terms Early Voting and Absentee Balloting are available on the back of this form.

We want to make early voting as user-friendly for voters as possible, so please help us by completing this survey!

All questions are optional.

Date Voted & Time:	Date/Day: _____ Approximate Time: _____
How did you hear about Early Voting? (Please check all that apply)	<input type="checkbox"/> Newspaper <input type="checkbox"/> State Website <input type="checkbox"/> T.V. <input type="checkbox"/> Town/City Website <input type="checkbox"/> Public Access T.V. <input type="checkbox"/> From a Friend <input type="checkbox"/> Radio <input type="checkbox"/> Didn't know until I arrived today <input type="checkbox"/> Town/City Official <input type="checkbox"/> Other: _____
Why did you choose Early Voting? (Please check all that apply)	<input type="checkbox"/> Convenient to my schedule <input type="checkbox"/> Want to avoid the polls on Election Day <input type="checkbox"/> Will be away on Election Day <input type="checkbox"/> Other (please explain): _____ _____
How have you voted in the past?	At the Polls on Election Day: <input type="checkbox"/> Always <input type="checkbox"/> Sometimes <input type="checkbox"/> Never Absentee (By Mail/hand delivered) <input type="checkbox"/> Always <input type="checkbox"/> Sometimes <input type="checkbox"/> Never Absentee (In Person/Town Office): <input type="checkbox"/> Always <input type="checkbox"/> Sometimes <input type="checkbox"/> Never
If you have previously voted by absentee ballot in person at the town office, how does today's experience compare?	Convenience / Ease of Voting: <input type="checkbox"/> More <input type="checkbox"/> Same <input type="checkbox"/> Less Confidentiality / Privacy: <input type="checkbox"/> More <input type="checkbox"/> Same <input type="checkbox"/> Less Other (please describe): _____ _____
Would you like to have this Early Voting option available in future elections?	<input type="checkbox"/> Yes <input type="checkbox"/> No
What did you like about this Early Voting experience? What would you like to see changed?	

THANK YOU



Appendix E

Early Voting Survey Results for the November 2009 Pilot Program



EARLY VOTING PILOT VOTER SURVEY RESULTS

OVERVIEW

Nine municipalities (Augusta, Bangor, Cumberland, Falmouth, Gorham, Hallowell, Saco, Scarborough, and Standish) conducted Early Voting Pilots in the days preceding the November 2, 2009 Referendum Election. Along with their ballots, voters opting to participate in the Early Voting pilot were provided with a survey designed to help policy makers and administrators evaluate the pilots.

Across all nine municipalities 12,970 citizens – approximately 23% of those who voted in that election in those municipalities – participated in the pilots, casting their ballots early. Of those voters, 12,060, or 93%, returned their survey forms (fully or partially completed). Responses indicate that the pilots were successful and, generally, enthusiastically embraced by those participating. Responses also offer valuable insight on why voters participated, what they liked or disliked and how any future Early Voting efforts can enjoy the same or greater success.

The following is a summary of the survey results.

EARLY VOTING PREVALENCE AND SURVEYS

Municipality	Total Ballots Cast	Early Voters (EV)	EV % of Total Ballots Cast	Survey Responses	% of EV Responding
Augusta	7218	1488	21%	1391	93%
Bangor	11430	3627	32%	3015	83%
Cumberland	3958	1109	28%	1108	100%
Falmouth	5661	1294	23%	1240	96%
Gorham	6885	948	14%	942	99%
Hallowell	1446	209	14%	193	92%
Saco	7614	1432	19%	1354	95%
Scarborough	9114	1988	22%	1956	98%
Standish	4068	875	22%	861	98%
TOTAL	57394	12970	23%	12060	93%

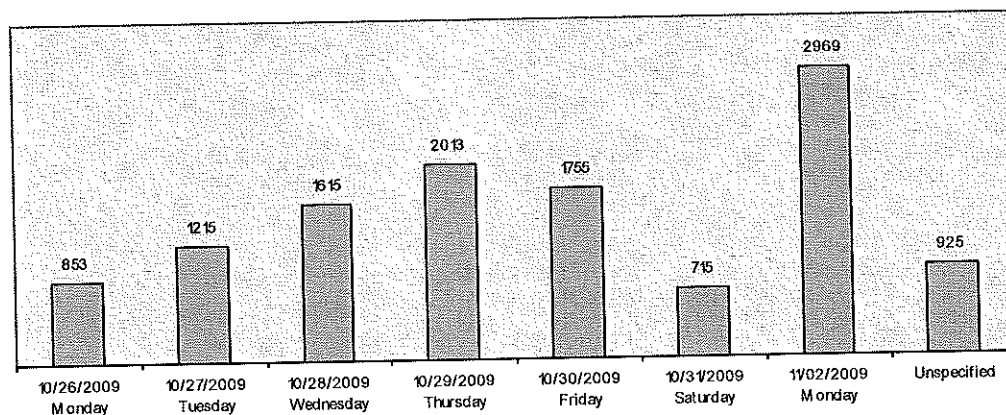


DATES AND TIMES OF EARLY VOTING

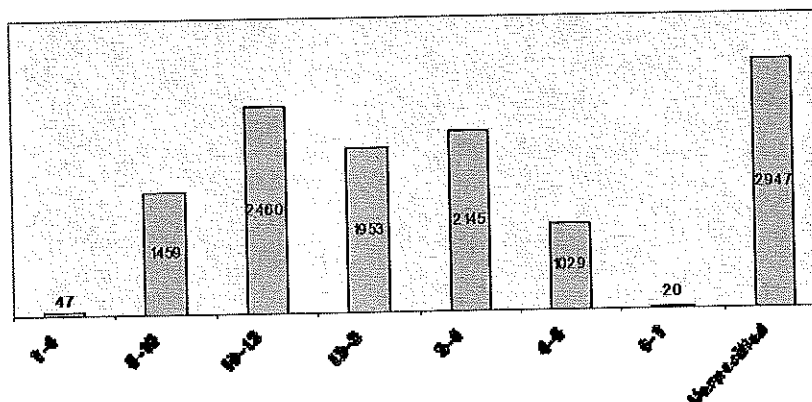
Day & Time Voted: All Pilot Municipalities

Date / Time Voted	7-8	8-10	10-12	12-2	2-4	4-6	6-7	Unspecified Time	Total Votes
10/26/2009 Monday	0	109	215	186	202	72	0	69	853
10/27/2009 Tuesday	0	151	232	205	225	115	0	287	1215
10/28/2009 Wednesday	6	169	321	280	321	214	3	301	1615
10/29/2009 Thursday	8	231	354	314	408	293	17	388	2013
10/30/2009 Friday	0	190	303	302	370	117	0	473	1755
10/31/2009 Saturday	0	166	370	60	0	0	0	119	715
11/02/2009 Monday	32	432	649	534	607	211	0	504	2969
No Date Noted	1	11	16	72	12	7	0	806	925
ALL DAYS	47	1459	2460	1953	2145	1029	20	2947	12060

Days Survey Respondents Voted



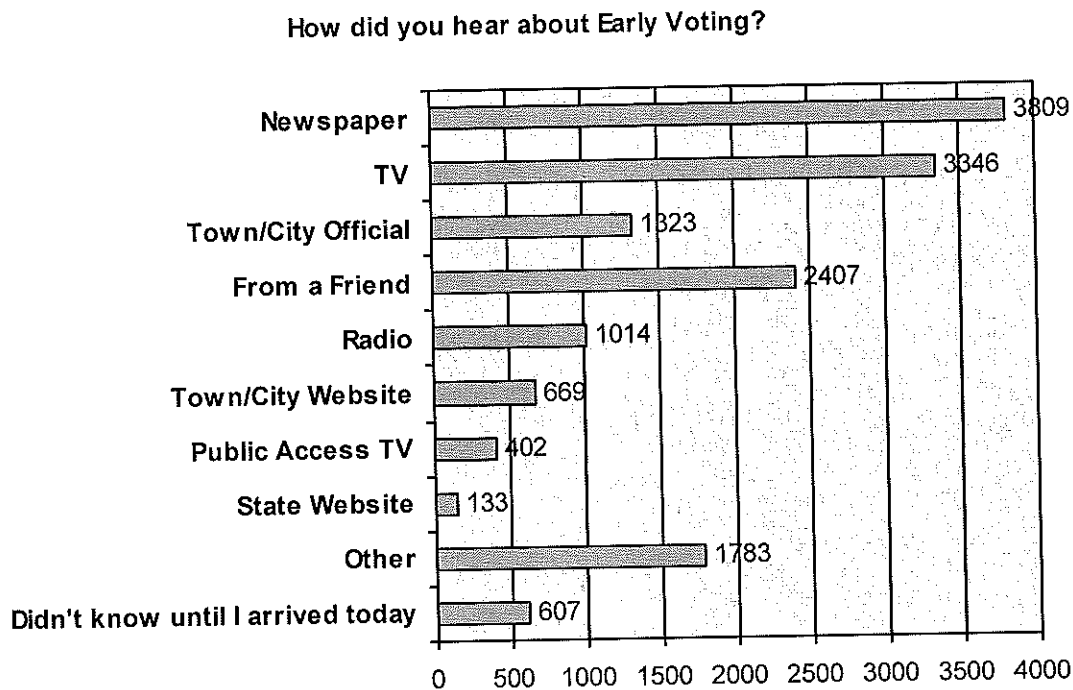
Time of Day Voters Voted





PUBLIC AWARENESS / OUTREACH

Voters were asked “How did you hear about Early Voting?” and were encouraged to select all options that applied. *11,786 answered this question, selecting one or more options.*



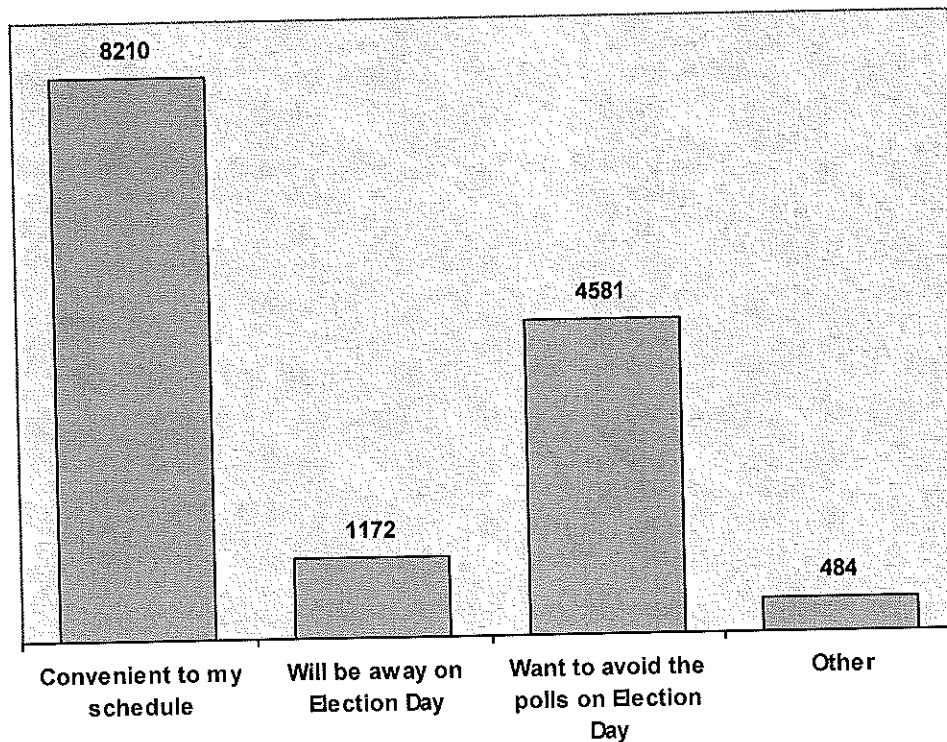
The ‘Other’ category included 607 responses from voters who indicated they had seen **road signs, posters, banners or other signage** advertising Early Voting. Also in the ‘Other’ category were 195 voters who indicated they had learned about early voting from various **family members** and 174 who indicated that they learned of early voting from **campaigns or advocacy groups**.



WHY VOTERS CHOSE TO EARLY VOTE

Voters were asked to indicate “Why did you choose Early Voting?” and were encouraged to select all options that applied. More than two thirds of voters cited “convenience to my schedule” as a reason for voting early. Nearly 1 out of 10 voters indicated they were going to be “away on Election Day”. Additionally, nearly 4 out of every 10 voters indicated that a desire to “avoid the polls on Election Day” was one of the reasons they chose to vote early. *11,801 answered this question, selecting one or more options.*

Why did you choose Early Voting?



Although small in numbers, it is worth noting that of those selecting “Other”: 42 cited mobility issues or other disabilities causing an aversion to lines or crowds and therefore a preference for Early Voting; 37 others also referenced a desire to avoid crowds and lines; 15 referenced a desire to avoid petitioners or candidates; 25 were either poll workers or campaign workers; 25 preferred the Early Voting location to their voting place; 73 were already at the Early Voting location for other business; 32 referenced a desire to be sure they did not miss the opportunity to votes and 22 referenced Early Voting to help a particular campaign.



VOTERS PREVIOUS VOTING METHODS

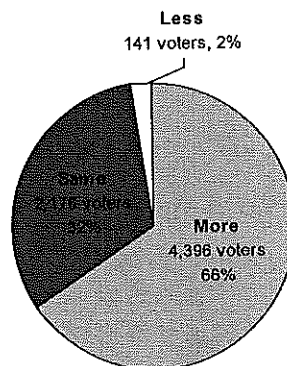
How have you voted in the Past?

	Always	Sometimes	Never
At the Polls on Election Day	6,447	4,023	220
Absentee (By Mail/hand delivered)	223	2,161	1,558
Absentee (In Person/Town Office)	655	3,372	1,111

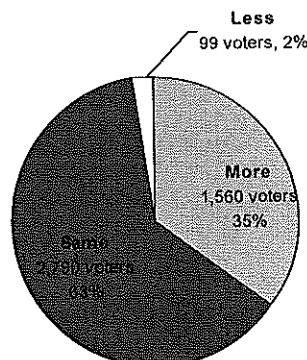
COMPARISON TO PRIOR VOTING

Voters were asked "If you have previously voted by absentee ballot in person at the town office, how does today's experience compare?" 11,854 voters answered the Convenience / Ease of Voting section of this question and 6,974 answered the Confidentiality / Privacy section of this question. [*These numbers do not correlate with the 4,016 voters indicating that they had previously voted Absentee (In Person/Town Office); and therefore reflects some confusion on the question.]

Convenience / Ease of Voting



Confidentiality / Privacy





DESIRE TO HAVE EARLY VOTING AS AN OPTION IN FUTURE ELECTIONS

Voters were asked to indicate “Would you like to have this Early Voting option available in future elections?” *11,870 voters answered this question.*

An overwhelming 98% of voters (virtually 100% of those responding to this question) answered “YES,” they would like this option in future elections.

Yes	11,798
No	82
No Response	180

LIKES

Voters were asked “What did you like about this Early Voting experience?” Responses were narrative. Of the 5,569 voters who responded to this question, responses include:

- 2,032 references to the **convenience**
- 1,124 references to **the lack of lines, shortness of lines, or lack of waiting**
- 896 references to the **ease** of Early Voting
- 562 references to the process as being **quick** or **fast**
- 436 references to the lack of **crowds**
- 536 descriptions such as **great, good, wonderful, perfect** or **excellent**

CHANGES

Voters were asked “What would you like to see changed?” Responses were narrative. Of the 1,251 voters who responded to this question:

- 799 actually indicated that nothing needed to change
- 296 recommended some type of change, as follows:
 - 45 seeking increased publicity and advertising of the Early Voting opportunities
 - 57 seeking expanded days, times, weekends (3 seeking option for all towns)
 - 11 ok with days but cautioning against expanding “too early”
 - 85 suggesting check-in simplifications or additional staff to process lines quicker
 - 44 seeking facilities enhancements (bigger room, more voting booths, privacy curtains on booths, quieter room)
 - 11 seeking expanded or different locations
 - 27 raising security concerns (24 calling for IDs to be required)
- 16 raising cost considerations
- 6 opposed Early Voting
- 152 offered unrelated comments (i.e. advocating or opposing online voting, airing concerns about election day voting place consolidation, recommending food be offered, seeking easier to comprehend ballot questions, or more information about local candidates)

ATTACHMENT C

Fact Sheet on Early Processing of Ballots for 3/3/20 Presidential Primary and Special Referendum Election Pursuant to Title 21-A Section 760-B

1. **Optional procedure:** Note: Beginning with the 11/5/2019 Referendum Election, Friday and Sunday were added as processing day options.
 - The Municipal Clerk may opt to process absentee ballots the **Friday (2/28), Saturday (2/29), Sunday (3/1), and/or Monday (3/2)** prior to Election Day (3/3).
2. **Time limits on processing**
 - Processing can occur between 9 am and 9 pm on any of the four days (**February 28 – March 2**) prior to Election Day, unless an inspection is requested (see section 4). If an inspection is requested, the inspection period would be 9 am to 10 am and processing may not begin until after 10 am.
 - The Municipal Clerk designates the time for processing to begin.
3. **Notice requirements**
 - The Municipal Clerk must complete the Notice of Intent to Process Absentee Ballots Prior to Election Day to designate 1 hour for inspection and designate the time for early processing to start after the inspection period. If no inspection is requested, the Clerk may begin processing at 9 am (or at chosen time after 9 am), by designating Time Processing Begins as “9 am, or immediately following a requested inspection”.
 - The Municipal Clerk must give notice at least 60 days before Election Day (**by 5 pm on January 3, 2020**) by:
 - mailing a copy of the Notice of Intent to Process Absentee Ballots Prior to Election Day to the Municipal Party Chairs (D, G, R) at their last known addresses; or by mailing a copy of the Notice of Election to the State Party Chairs (if no municipal chairs); **and**
 - providing a copy of the Notice to the Division of Elections by one of these methods
 1. Email a scanned attachment (cec.officials@maine.gov)
 2. Fax (287-6545 or 287-5428)
 3. Mail (101 SHS, Augusta, ME 04333)

Note: If a copy of the Notice of Intent to Process Absentee Ballots Prior to Election Day is not received by the Division of Elections by **January 3, 2020**, the municipality **may not** process absentees prior to the election.
4. **Inspection before Processing**
 - A member of the public who wishes to inspect absentee materials must make a written request to the Clerk **by 9 am on each day that the clerk intends to process absentee ballots prior to Election Day**, to inspect the absentee applications/envelopes before they are processed.
 - The Municipal Clerk must allow **1 hour** for inspection before processing (e.g. 9 am to 10 am).
 - The Municipal Clerk may start processing immediately after the inspection period has elapsed, or at the time designated on the Notice, if later.
5. **Ballot Processing and Other Procedures**
 - The Municipal Clerk follows absentee ballot processing procedures in Title 21-A §759, §760-A.
 - The procedures for handling full ballot boxes (optical scan only), pollwatching and challenging ballots are conducted in the same manner as on Election Day.
6. **Counting and Results Prohibited before the Close of the Polls on Election Day**
 - Ballots **may not** be counted, voter intent **may not** be determined and election results **may not** be obtained or released until after the polls close on Election Day (and after all in-person voters have voted and all absentee ballots have been processed).
7. **Security of Processed Ballots and Tabulating Equipment**

At the conclusion of early absentee ballot processing, the Municipal Clerk shall ensure:

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- the processed absentee ballots are locked and sealed in tamper-proof containers, as required by the "Uniform Guidelines for Securing Ballots and Other Materials"; and
- these locked and sealed containers must be further secured in a vault or other locked, secure location until ballots are counted after the polls close on Election Day.

Instructions for Completing Intent to Process Absentee Ballots Prior to Election Day Notice

Prepared by the Office of the Secretary of State, November 2019

The Notice provided in this mailing is **only for the purpose of notifying the Secretary of State and political parties of the municipality's intent to process absentee ballots prior to Election Day.**

Public Law 2019, Chapter 371 authorizes municipalities the option to process absentee ballots beginning on the 4th day before Election Day, including Sunday. If you choose to process early, you can do so on any date or combination of dates below (with proper notice to this office and the political party chairs, at least 60 days prior to the election):

Early Processing Day Option(s)	Date Option(s)
Friday	2/28/2020
Saturday	2/29/2020
Sunday	3/1/2020
Monday	3/2/2020

The steps for completing the Notice are as follows:

1. **Complete the municipality name**
2. **Complete the date(s) and time(s) of Early Processing**
3. **Complete the location name and address for the place where early processing will occur.**
4. **Provide an attested copy** of the completed *Notice of Intent to Process Absentee Ballots Prior to Election Day* to the Secretary of State (Division of Elections) and the municipal chair of each political party **at least 60 days before Election Day (by January 3, 2020)**. Notice to the political parties must be mailed to the last address of each municipal chair known to the Clerk. If there is no municipal chair, the notice must be mailed to the state party chair of each party. Contact information for the state party chairs is provided in this mailing and posted on the Elections Temp page.
5. A copy of the **Notice of Intent to Process Absentee Ballots Prior to Election Day** must be posted with the Notice of Election and sample ballots in each voting district in the municipality at least 7 days prior to election day and each voting place on election day, pursuant to Title 21-A, section 621-A(1). The Clerk shall also record a copy of the Notice of Intent to Process Absentee Ballots Prior to Election Day.

Note: A Clerk intending to process absentee ballots before Election Day must read and comply with the *Uniform Guidelines for Securing Ballots and Other Materials*. The clerk must confirm this fact and initial the Notice of Intent to Process Absentee Ballots Prior to Election Day where indicated. A copy of the Uniform Guidelines is posted on the temp site.

Clerks intending to process absentee ballots only on Election Day before the polls have closed: or process only on Election Day after the polls have closed should not complete the Notice provided in this mailing. These Clerks will need to complete only the actual Notice of Election (to be provided in a future mailing).

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Security in Early Voting Across the Country

LD 580: Resolution, Proposing an Amendment to the Constitution of Maine Regarding Early Voting

Summary:

- 20 states, including the District of Columbia, allow for early voting (*Note: there is some confusion as the National Conference of State Legislatures includes absentee voting as a form of early voting. We have endeavored to separate out those that vote absentee from those that have early voting.)
- Timeframe for early voting varies but many states allow for early voting at least 30 days before election
- Common practices amongst states:
 - Use of secure locations for equipment and ballots during the period of early voting
 - Having election officials conduct procedures in pairs
 - Comparison of the elector's signature from registration to the ballot

State	Early Voting	Security Measures
Alaska	15 days before election	<ul style="list-style-type: none">• Eligible voters may vote in locations designated by the director. <i>AS 15.20.064(a)</i>.
Arizona	26 days before election	<ul style="list-style-type: none">• The ballot shall be identical with the regular official ballots, except that it shall have printed or stamped on it "early." <i>ARS 16-545(A)</i>.• The early voter shall make and sign the affidavit and shall then mark his ballot in such a manner that his vote cannot be seen. The early voter shall fold the ballot, if a paper ballot, so as to conceal the vote and deposit the voted ballot in the envelope provided for that purpose, which shall be securely sealed and, together with the affidavit, delivered or mailed to the county recorder or other officer in charge of elections of the political subdivision in which the elector is registered or deposited by the voter or the voter's agent at any polling place in the county. In order to be counted and valid, the ballot must be received by the county recorder or other officer in charge of elections or deposited at any polling place in the county no later than 7:00 p.m. on election day. <i>ARS 16-548(A)</i>.• On receipt of the envelope containing the early ballot and the ballot affidavit, the county recorder or other officer in charge of elections shall compare the signatures thereon with the signature of the elector on the elector's registration record. If the signature is inconsistent with the elector's signature on the elector's registration record, the county recorder or other officer in charge of elections shall make

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		<p>reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature. The county recorder or other officer in charge of elections shall allow signatures to be corrected not later than the fifth business day after a primary, general or special election that includes a federal office or the third business day after any other election. If satisfied that the signatures correspond, the recorder or other officer in charge of elections shall hold the envelope containing the early ballot and the completed affidavit unopened in accordance with the rules of the secretary of state. <i>ARS 16-550(A)</i>.</p> <ul style="list-style-type: none"> • The recorder or other officer in charge of elections shall thereafter safely keep the affidavits and early ballots in the recorder's or other officer's office until delivered pursuant to section 16-551 and tallying of ballots shall not begin any earlier than fourteen days before election day. <i>ARS 16-550(B)</i>.
Arkansas	15 days before election	<ul style="list-style-type: none"> • The early voting election official shall record the date on all pages of the early voting roster or early voting request form and keep a daily record of the number of early ballots cast. <i>AR Code §7-5-418(b)(4)</i>. • All voted ballots and unvoted ballots and all related election materials at each additional early voting polling site shall be stored in a secure location in the county courthouse or in a secure location as determined by the county board of election commissioners immediately after the close of the additional polling sites each day that early voting is conducted there. <i>AR Code §7-5-418(b)(5)</i>. • [E]arly voting shall be conducted in the same manner as voting on election day. Conduct that is prohibited or restricted on election day shall be subject to the same prohibitions and restrictions on the days on which early voting is conducted. <i>AR Code §7-5-418(f)</i>.
California	29 days before election	<ul style="list-style-type: none"> • The elections official shall keep a record of each vote by mail voter ballot sent to and received from a voter and shall verify, prior to counting any duplicate ballot, that the voter has not attempted to vote twice. If it is determined that a voter has attempted to vote twice, both ballots shall be void. <i>Elec. Code §3014</i>. • Any voter using a vote by mail ballot may, prior to the close of the polls on election day, vote the ballot at the office of the elections official. The voter shall vote the ballot in the presence of an officer of the elections official or in a voting booth, at the discretion of the elections official, but in no case may his or her vote be observed. <i>Elec. Code §3018</i>.

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		<ul style="list-style-type: none"> The system established pursuant to this section shall, at a minimum, allow a voter to register to receive information via email or text message from the county elections official about the status of the voter's vote by mail ballot. <i>Elec. Code §3017(a).</i>
District of Columbia	7 days before election, but in-person absentee voting is available 15 days before	The Board shall receive the ballots cast and deposit them in a secure place where they shall be safely kept for 22 months. Inspection of such ballots shall be made in accordance with regulations of the Board. Whenever the ballots shall have remained in the custody of the Board for 22 months, and no election contest or other proceeding is pending in which the ballots may be needed as evidence, the Board may destroy such ballots. <i>DC ST § 1-1001.09(j).</i>
Florida	10 days before election – may be offered 11-15 days before an election that contains state and federal races, at the discretion of the elections supervisor	<ul style="list-style-type: none"> The supervisor shall mark, code, indicate on, or otherwise track the voter's precinct for each early voted ballot. <i>Fla. Stat. §101.657(1)(a).</i> During any early voting period, each supervisor of elections shall make available the total number of voters casting a ballot at each early voting location during the previous day. Each supervisor shall prepare an electronic data file listing the individual voters who cast a ballot during the early voting period. This information shall be provided in electronic format as provided by rule adopted by the division. The information shall be updated and made available no later than noon of each day and shall be contemporaneously provided to the division. <i>Fla. Stat. §101.657(2).</i>
Georgia	4 th Monday prior to a primary or election; as soon as possible prior to a runoff	<ul style="list-style-type: none"> The superintendent shall, at or before 12:00 Noon on the day following the primary or election, at his or her office or at some other convenient public place at the county seat or in the municipality, of which due notice shall have been given as provided by Code Section 21-2-492, publicly commence the computation and canvassing of the returns and continue the same from day to day until completed. <i>GA Code §21-2-493(a).</i> The superintendent, before computing the votes cast in any precinct, shall compare the registration figure with the certificates returned by the poll officers showing the number of persons who voted in each precinct or the number of ballots cast. <i>GA Code §21-2-493(b).</i> In precincts in which paper ballots have been used, the superintendent may require the production of the ballot box and the recount of the ballots contained in such ballot box, either generally or respecting the particular office, nomination, or question as to which the excess exists, in the discretion of the superintendent, and may require the correction of the returns in accordance with the result of such recount. <i>GA Code §21-2-493(c).</i>

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		<ul style="list-style-type: none"> In precincts in which voting machines have been used, the superintendent may require a recanvass of the votes recorded on the machines used in the precinct, as provided in Code Section 21-2-495. <i>GA Code §21-2-493(d)</i>. As the returns from each precinct are read, computed, and found to be correct or corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until all the returns from the various precincts which are entitled to be counted shall have been duly recorded; then they shall be added together, announced, and attested by the assistants who made and computed the entries respectively and shall be signed by the superintendent. <i>GA Code §21-2-493(k)</i>.
Illinois	40 th day before election for temporary polling locations and 15 th day before election for permanent locations	<ul style="list-style-type: none"> In conducting early voting under this Article, the election judge or official is required to verify the signature of the early voter by comparison with the signature on the official registration card, and the judge or official must verify (i) that the applicant is a registered voter, (ii) the precinct in which the applicant is registered, and (iii) the proper ballots of the political subdivision in which the applicant resides and is entitled to vote before providing an early ballot to the applicant. <i>10 ILCS 5/19A-35(b)</i>. The sealed early ballots in their carrier envelope shall be delivered by the election authority to the central ballot counting location before the close of the polls on the day of the election. <i>10 ILCS 5/19A-35(c)</i>.
Louisiana	14 days before election	<ul style="list-style-type: none"> Before any voter is allowed to vote during early voting, the registrar or his deputy shall establish the voter's identity by requiring him to submit either their Louisiana driver's license, U.S. military ID card . . . <i>LRS 18:1309(D)(1)(a)</i>. At the end of the early voting period, the registrar shall complete the early voting verification form for each location and sign and certify to its correctness and print an early voter report from the state voter registration computer system listing all early voters from the parish. All early voting verification forms, early voting machine public counter logs, early voting confirmation sheets, early voter reports, and paper ballots voted during early voting shall be placed in the special absentee by mail and early voting envelope or container for delivery to the parish board of election supervisors on election day for the tabulation and counting of early voting ballots. <i>LRS 18:1309(F)(3)</i>
Maryland	Only in 2020 – and it was Monday, Oct 26 until Election Day	At the end of each day of early voting, all voting equipment and other election supplies will be secured at the early voting center. The local boards of elections are required to file a security plan for each early voting center, and the plans will include information on how the equipment and supplies will be secured at the center. Voted provisional ballots will be returned to the local board of elections each night of early voting. After voting hours on the last day of early

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		<p>voting, all equipment and supplies will be returned to the local board of elections and securely stored until election day. At the end of each day of early voting, all voting equipment and other election supplies will be secured at the early voting center. The local boards of elections are required to file a security plan for each early voting center, and the plans will include information on how the equipment and supplies will be secured at the center. Voted provisional ballots will be returned to the local board of elections each night of early voting. After voting hours on the last day of early voting, all equipment and supplies will be returned to the local board of elections and securely stored until election day.</p> <p>https://elections.maryland.gov/voting/early_voting.html</p>
Massachusetts	11 days before the election	<ul style="list-style-type: none"> • Prior to the beginning of early voting, the registrars for each city or town shall prepare a list for the early voting sites, containing the names and residences of all persons qualified to vote at each voting site, as the names and residences appear upon the annual register, and shall reasonably transmit the applicable list to the election officers at each early voting site designated by the registrars. <i>M.G.L.A. 54 §25B(k).</i> • The registrar or presiding official at the early voting site shall cause to be placed on the voting lists opposite the name of a qualified voter who participates in early voting the letters "EV" designating an early voter. <i>M.G.L.A. 54 §25B(l).</i> • The counting of early voting ballots including, but not limited to, informing election officers and any challengers present under section 85A shall be set by regulations promulgated under this chapter. All envelopes referred to in this section shall be retained with the ballots cast at the election and shall be preserved and destroyed in the manner provided by law for the retention, preservation or destruction of official ballots. <i>M.G.L.A. 54 §25B(n).</i>
Nebraska	30 days before each election	<ul style="list-style-type: none"> • Such ballots received by the election commissioner or county clerk after the close of the polls on election day shall remain sealed in the envelope on which the election commissioner or county clerk shall write Rejected, received on, and the date on which the ballot was received. If such a ballot was received on election day but after the close of the polls, the election commissioner or county clerk shall also write on the envelope the time at which the ballot was received. Such rejected ballots shall be segregated and stored in a sealed container designated for Rejected Early Ballots. <i>N.R.S. §32-950.</i>
Nevada	3 rd Saturday preceding election	<p>(1) A plan for the security of ballots for early voting must be submitted to the Secretary of State for approval no later than 90 days before the election at which early voting is to be conducted.</p>

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		<p>(2) At the close of early voting each day, the deputy clerk for early voting shall secure each voting machine used for early voting in a manner prescribed by the Secretary of State so that its unauthorized operation is prevented.</p> <p>(3) All materials for early voting must be delivered to the county clerk's office at the close of voting on the last day for voting at the polling place for early voting. <i>N.R.S. §293.3594.</i></p>
New Mexico	3 rd Saturday before election	<ul style="list-style-type: none"> Before opening an official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope. <i>N.M.S.A. §1-6-14(A).</i>
New York	10 th day before an election	<ul style="list-style-type: none"> The form of paper ballots used in early voting shall comply with the provisions of article seven of this chapter that are applicable to voting by paper ballot on election day and such ballot shall be cast in the same manner as provided for in section 8-312 of this article, provided, however, that ballots cast during the early voting period shall be secured in the manner of voted ballots cast on election day and such ballots shall not be canvassed or examined until after the close of the polls on election day, and no unofficial tabulations of election results shall be printed or viewed in any manner until after the close of polls on election day. <i>Election Law Title VI, §8-600(6).</i> [A]t the end of each day of early voting, any early voting ballots that have not been scanned because a ballot scanner was not available or because the ballot has been abandoned by the voter at the ballot scanner shall be cast in a manner consistent with section 9-110 of this chapter, except that such ballots which cannot then be cast on a ballot scanner shall be held inviolate and unexamined and shall be duly secured until after the close of polls on election day when such ballots shall be examined and canvassed in a manner consistent with subdivision two of section 9-110 of this chapter. <i>Election Law Title VI, §8-600(8).</i> The board of elections shall secure all ballots and scanners used for early voting from the beginning of the early voting period through the close of the polls on election day; provided, however, the state board of elections may by regulation duly adopted by a majority of such board establish a procedure whereby ballot scanners used for early voting may also be used on election day if the portable memory devices used during early voting containing the early voting election information and vote tabulations are properly secured apart from the scanners, and the results therefrom shall be duly canvassed after the close of polls on election day. <i>Election Law Title VI, §8-600(9).</i>
North Carolina	3 rd Thursday before election	<ul style="list-style-type: none"> Counting takes place at 5pm on Election Day. <i>N.C.G.S.A. §163-234(2).</i>

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		<ul style="list-style-type: none"> The ballots will be removed from their envelopes and read by an optical scanning machine, without printing the totals on the scanner. <i>N.C.G.S.A. §163-234(3).</i> The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and that fact is publicly declared and entered in the official minutes of the county board. <i>N.C.G.S.A. §163-234(4).</i> Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The "Pollbook of Absentee Voters" shall also contain the names of all persons who voted under G.S. 163-227.2, 163-227.5, and 163-227.6, but those names may be printed by computer for inclusion in the pollbook. After all ballots have been placed in the boxes, the counting process shall begin. <i>N.C.G.S.A. §163-234(6).</i>
North Dakota	15 days before election	<ul style="list-style-type: none"> At the close of each day of early voting, the inspector, along with a judge from each political party represented on the board, shall secure all election-related materials, including: (1) The pollbooks and access to any electronically maintained pollbooks. (2) The ballot boxes containing voted ballots. (3) Any void, spoiled, and unvoted ballots. <i>NDCC §16.1-07-15(1)(d).</i> Ballot boxes containing ballots cast at an early voting polling place may not be opened until the day of the election except as may be necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box in order to make room for additional ballots. <i>NDCC §16.1-07-15(1)(e).</i>
Tennessee	20 days before election	The county election commission shall secure each voting machine used in early voting to prohibit tampering and shall also provide maximum security that allows no other person, except for persons designated by the election commission or the administrator of elections, to have access to the room or facility in which the voting machines, ballots and other election supplies are stored. <i>Tenn. Code §2-6-104(c).</i>
Texas	17 days before election	<ul style="list-style-type: none"> The ballot box in which voters deposit their marked early voting ballots must have two locks, each with a different key, and must be designed and constructed so that the box can be sealed to detect any unauthorized opening of the box and that the ballot slot can be sealed to prevent any unauthorized deposit in the box. The seals for the boxes must be serially numbered for each election. The procedures prescribed by Sections <u>127.064</u>, <u>127.065</u>, <u>127.066</u>, and <u>127.068</u> governing the use of sealed ballot boxes in electronic voting system elections apply to the use of sealed ballot boxes under this title to the extent those procedures can be made applicable. The secretary of state

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		<p>shall prescribe any procedures necessary to implement the use of sealed ballot boxes in early voting. <i>Tex. Elec. Code §85.032(b)</i>.</p> <ul style="list-style-type: none"> • During the period for early voting by personal appearance, the early voting clerk shall keep the key to one of the locks to the early voting ballot box, and the custodian of keys to ballot boxes for preserving voted ballots after the election shall keep the key to the second lock. <i>Tex. Elec. Code §85.032(c)</i>. • Each custodian shall retain possession of the key entrusted to the custodian until it is delivered to the presiding judge of the central counting station. <i>Tex. Elec. Code §85.032(d)</i>. • A sealed case may be used for transferring voted early voting ballots in accordance with procedures approved by the secretary of state. <i>Tex. Elec. Code §85.032(e)</i>. • The secretary of state shall prescribe procedures providing for the security of the voted early voting ballots from the last day of voting by personal appearance at a polling place until the day the ballots are counted. <i>Tex. Elec. Code §85.032(f)</i>.
West Virginia	13 days before election	<p>Upon receipt of the voted ballot, representatives of the official designated to supervise and conduct the absentee voting shall: (1) Remove the ballot stub; (2) Place punch card ballots and paper ballots into one envelope which shall not have any marks except the precinct number and seal the envelope; and (3) Place ballots for all voting systems into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk. <i>W.V. Code §3-3-3(g)</i>.</p>