

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 5, 2021

To: Veterans and Legal Affairs Committee

From: Janet Stocco, Legislative Analyst

LD 1354 **Resolve, To Study the Establishment of a System of Voting by Mail** (*Sen. Miramant*)

SUMMARY

This resolve directs the Secretary of State to explore options for implementing a system of automatic voting by mail and to submit a report to this Committee by January 1, 2022. The resolve further directs the Secretary of State to review existing Maine laws that would be affected by implementation of such a system when conducting the study.

The report submitted by the Secretary of State must include:

1. A comparison of “automatic voting by mail” in other states, including Colorado and Oregon.
2. A recommended “model for implementing automatic voting by mail,” including, but not limited to:
 - Automatically mailing ballots to voters;
 - Whether to prepay the postage for voters to return their ballots by mail and other options for returning ballots, including drop boxes, polling places or other designated locations;
 - Methods to ensure voter addresses are current, including automatic voter registration, regular comparisons with state databases and “online registration updates for voters”;
 - A ballot tracking system or systems that are (1) accessible to poll workers to prevent voters from voting more than once and (2) accessible to voters to track their own ballots;
 - Pre-canvassing to prevent delays on election day as well as a notification process to inform voters of problems that could lead to their ballots being rejected and a process for voters to cure defects with returned ballots;
 - Acceptance of ballots postmarked on or before election day if those ballots are received by a specified post-election deadline; and
 - Multistage signature verification to confirm voter identifies;
3. The estimated cost of implementing automatic voting by mail.
4. Any legislation necessary to implement automatic voting by mail.

ISSUES RAISED AND AMENDMENTS PROPOSED AT PUBLIC HEARING

1. **Secretary of State’s proposed amendment.** The Secretary of State [proposed an amendment](#) to the resolve that would to strike the requirements that the report include (1) a recommended model for implementing automatic voting by mail; (2) the estimated cost of the model and (3) draft legislation to implement the model. Instead, the Secretary of State proposed that the report include only:
 - A review and comparison of the framework used by states who have implemented vote by mail, including but not limited to Oregon, Colorado and Vermont or another state that has municipal-based election administration;

- Analysis of states with universal absentee ballots and vote by mail to identify legal barriers to implementation in Maine.
2. **League of Women Voters’ proposed amendment.** The League expressed several concerns with the current draft of LD 1354, including:
- The short time frame for the Secretary of State to complete the comprehensive study required by the resolve; and
 - The resolve’s failure to require the Secretary of State to evaluate whether, and not just how, Maine should implement a system of voting by mail.

In addition, if the State eventually implements a vote-by-mail system, the League suggested that the system implemented should not eliminate election day voter registration or the option for voters to cast their ballots in-person on election day.

ADDITIONAL INFORMATION

1. **Vote-by-mail systems in other states.** According to the NCSL’s *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options* report issued in September 2020, five states (CO, HI, OR, WA, UT) conduct all of their elections by mail. In these 5 states all active, eligible registered voters are sent a ballot in the mail although these voters not only have the option to return those ballots by mail or in a secure drop box but also the option to instead vote in-person on election day. See attached excerpt of this NCSL report.

In addition, in response to the coronavirus pandemic, four additional states (CA, MV, NJ and VT) mailed ballots to all registered voters for the November 2020 general election. An additional state, Montana, gave each county discretion whether to mail ballots to all registered voters in 2020. See <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-mail-voting-policies-in-effect-for-the-2020-election.aspx>.

TECHNICAL ISSUES

1. **Automatic voting by mail.** The Committee may wish to consider whether the phrase “automatic voting by mail” is the most appropriate way to describe the vote-by-mail system contemplated in the Resolve. If the intent is to require the Secretary of State to study “voting by mail” systems in which ballots are mailed to all active, registered voters for each election, it may make sense to amend the resolve to state this explicitly.
2. **Features of the recommended model.** The Committee may wish to consider whether the recommended model that the Secretary of State is required to propose must address:
- “automatic voter registration” (line 16), which has already been enacted in Maine; and
 - “a system for voters to track their ballots” (line 20) and “a process through which voters can fix issues with ballots that have been returned” (line 28), which the Committee has not yet decided whether to enact through LD 1363 this session.

FISCAL IMPACT

Not yet determined.

Excerpt from: [Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options](#)

9/24/2020

What Are All-Mail Ballot Elections?

Five states currently conduct all elections entirely by mail: Colorado, Hawaii, Oregon, Washington and Utah. Three states--California, Nebraska and North Dakota allow counties to determine if an election will be held entirely by mail, with many but not all counties choosing to do so. At least 17 states have provisions allowing certain elections to be conducted entirely by mail. For these elections, all registered voters are sent a ballot in the mail. The voter marks the ballot, puts it in a secrecy envelope or sleeve and then into a separate mailing envelope, signs an affidavit on the exterior of the mailing envelope, and returns the package via mail or by dropping it off. Find more details on [Table 18: States With All-Mail Elections](#).

Ballots are mailed out well ahead of Election Day, and thus voters have an “election period,” not just a single day, to vote. All-mail elections can be thought of as absentee voting for everyone. This system is also referred to as “vote by mail.”

While “all-mail elections” means that every registered voter receives a ballot by mail, this does not preclude in-person voting opportunities on and/or before Election Day. For example, despite the fact that all registered voters in Colorado are mailed a ballot, voters can choose to cast a ballot at an in-person vote center during the early voting period or on Election Day (or drop off or mail their ballot back).

Five states—Colorado, Hawaii, Oregon, Utah and Washington—send mailed ballots to all eligible voters. In California, some counties are currently permitted to conduct all-mail elections, and in 2020 more than 50% of the state’s voting population live in counties that will do so. After 2020, the option will be available to all counties in the state. Utah permits individual counties to determine if they would like to conduct all-mail elections and all counties are expected to do so in 2020.

Other states permit all-mail elections in certain circumstances, such as for special elections, municipal elections, when there is a smaller voting population in a given district, or at the discretion of the county clerk. See below for state-by-state statutes.

Generally, states begin with providing all-mail elections only in certain circumstances, and then add additional opportunities as citizens become familiar with procedures. [Oregon’s vote-by-mail timeline](#) includes four times that the legislature acted prior to the 1998 citizens’ vote that made Oregon the first all-mail election state.

Which States Have Statutory Provisions for All-Mail Ballot Elections?

- States that conduct all elections by mail:
 - **Colorado** (enacted by [HB 1303](#) in 2013; first implemented statewide in 2014; CRS §1-5-401).
 - **Hawaii** (enacted by [HB 1248](#) in 2019; first implemented statewide in 2020; Hawaii Stat. §11-101).
 - **Oregon** (enacted by citizens’ initiative in 1998; first implemented statewide in 2000; ORS §254.465).
 - **Utah**: ([HB 172](#) in 2012 permitted jurisdictions to choose to conduct elections entirely by mail; first implemented by all jurisdictions in the state in 2019; Utah Code Ann. §20A-3a-302).
 - **Washington** (enacted by [HB 5124](#) in 2011; first implemented statewide in 2012; Rev. Code of Wash. 29A.40.010).

Adoption of All-Mail Ballot Elections

State	Year Enacted	Bill #	Year Implemented	Citation
Colorado	2013	HB1303	2014	CRS §1-5-401
Hawaii	2019	HB 1248	2020	Hawaii Stat. §11-101
Oregon	1998	Citizen's initiative	2000	ORS §254.465
Utah	2012 (permitted counties)	HB 172	2019 (first year all counties used it)	Utah Code Ann. §20A-3a-302
Washington	2011	HB 5124	2012	Rev. Code of Wash. 29A.40.010

- States that permit counties to opt into conducting all elections by mail:
 - **California:** After/on Jan. 1, 2018, 14 counties may conduct all-mail elections. After Jan. 1, 2020, any county may conduct any election as an all-mail election following statutory guidelines (Cal. Elect. Cde §§4005-4008). When there are 250 or fewer voters registered to vote in a precinct (Cal. Elect. Code §3005); local, special or consolidated elections that meet certain criteria (Cal. Elect. Code §4000). See information from the California secretary of state on the [Voter's Choice Act](#) for a list of counties that have currently opted for this option.
 - **Nebraska:** Any county of less than 10,000 inhabitants may apply to the secretary of state to mail ballots for all elections in lieu of establishing polling places (Neb. Rev. Stat. §32-960). Special ballot measure elections that meet certain criteria, held by a political subdivision (Neb. Rev. Stat. §32-952).
 - **North Dakota:** Counties may conduct any election by mail. Applications for mailed ballots are sent to each individual listed on the central voter file (note that North Dakota does not require voter registration ahead of the election) and there must be one or more polling places in the county for voting in the usual manner (ND Cent. Code §16.1-11.1-01 et seq.).
- States that permit some elections to be conducted by mail:
 - **Alaska:** Elections that are not held on the same day as a general, party primary or municipal election (Alaska Stat. §15.20.800).
 - **Arizona:** A city, town, school district or special district may conduct elections by mail (Ariz. Rev. Stat. Ann. §16-409, §16-558).
 - **Florida:** Referendum elections at the county, city, school district or special district level (Fla. Stat. §101.6102).
 - **Kansas:** Nonpartisan elections at which no candidate is elected, retained or recalled and which is not held on the same date as another election (Kan. Stat. Ann. §25-432).
 - **Maryland:** Special elections not held concurrently with a regularly scheduled primary or general election (Md. Election Code §9-501).
 - **Missouri:** Nonpartisan issue elections at which no candidate is elected, retained or recalled and in which all qualified voters of one political subdivision are the only voters eligible to vote (Mo. Rev. Stat. §115.652 et seq.).
 - **Montana:** Any election other than a regularly scheduled federal, state, or county election; a special federal or state election, unless authorized by the legislature; or a regularly scheduled or special

election when another election in the political subdivision is taking place at the polls on the same day (MCA 13-19-101 et seq.).

- **New Mexico:** Special elections, except those to fill a vacancy in the office of U.S. Representative, shall be conducted by mail (N.M. Stat. §1-24-3).
- **Wyoming:** Counties may decide to conduct special elections not held in conjunction with a primary, general or statewide special election entirely by mail (Wyo. Stat. 22-29-115)

In addition to the all-mail elections mentioned above, five states permit certain jurisdictions (or portions of a jurisdiction) to be designated as all-mail based on population:

- **Idaho:** A precinct which contains no more than 140 registered electors at the last general election may be designated by the board of county commissioners a mail ballot precinct no later than April 1 in an even-numbered year (Idaho Code §34-308).
- **Minnesota:** Elections conducted by a municipality having fewer than 400 registered voters on June 1 of an election year and not located in a metropolitan county (Minn. Stat. §204B.45).
- **Nevada:** Whenever there were not more than 20 voters registered in a precinct for the last preceding general election (Nev. Rev. Stat. §293.213).
- **New Jersey:** A municipality with a population of 500 or fewer persons, according to the latest federal decennial census, may conduct all elections by mail (NJRS §19.62-1).
- **New Mexico:** A county may designate a precinct as a mail ballot election precinct if it has fewer than 100 voters and the nearest polling place for an adjoining precinct is more than 20 miles driving distance from the precinct boundary in question (N. M. Stat. Ann. § 1-6-22.1).