



Board for Registration of Voters

**Board for Registration of Voters - Tuesday, October 3, 2023, 6:00 PM, Sharon Bushor
Conference Room, City Hall, 1st Floor, 149 Church St. Burlington, VT 05401 or
Remotely via Zoom.**

PLEASE NOTE:

The meeting will be held in the Sharon Bushor Conference Room at City Hall, 149 Church St. Burlington, VT 05401 or Remotely via Zoom.

Join Zoom Meeting

<https://zoom.us/j/99553509592>

Meeting ID: 995 5350 9592

One tap mobile

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1. Agenda

1.1. Motion to amend/adopt agenda

2. Set Meeting Length

3. Introductions

4. Adopt Minutes

Subject

4.1. Approve Minutes from 09/05/2023

File Attachments

1. BRV Minutes - Draft 090523

BRV Minutes - Draft 090523.pdf

5. Public Comments

6. Clerk's Report

7. Challenge Approvals

8. Voter List Maintenance

Subject		8.1. Voter List Maintenance Slide Deck
File Attachments		
1.	Voter list maintenance slide deck	Voter list maintenance slide deck.pdf

9. New Business

Subject		9.1. Communication from the City Attorney
File Attachments		
1.	Agenda-attachments-attorneycommunciation	Agenda-attachments-attorneycommunciation.docx

10. Adjournment

BOARD FOR REGISTRATION OF VOTERS

MEET: Time 6:00p 09/05/2023

Where: Community Room at the Police Department and remotely via Zoom

Present: Grace Grundhauser, Annie Schneider, Lauren Ebersol, Mike McGarghan, Michelle Lefkowitz, Olga Bravo, Alison Harte, Lesley Gendron

Absent: Karen Rowell, Thea Knight, Helen Rock

Also Present: Sarah Montgomery (Assistant City Clerk)

Meeting called to order by Chair Grace Grundhauser at 6:00pm

Agenda:

Approved unanimously.

Meeting Length:

The meeting length was set for one hour.

Public Comments:

No members of the public were present.

Clerk's Report:

Sarah Montgomery reported that there are currently 31,095 registered voters on the checklist. Out of those, 8,239 voters are challenged. In August, 202 voters were added to the checklist, 38 voters were purged/ removed from the checklist, and 139 voters were transferred to other Vermont towns.

Sarah Montgomery followed up with information surrounding questions that were raised last month during the BRV and Clerk authority discussion: She reported that she reached out to one of the election administrators from the Secretary of State's office and they verified that the checkbox on the voter registration form is for if a registration needs to be referred to the BRV for further review. It does not indicate that the BRV (BCA in other towns) needs to review every application. Alison Harte asked, does this mean board members no longer need to go to City Hall to sign applications? Grace Grundhauser confirmed this and added context, explaining that, by custom, the BRV had been doing this diligently, but recent research by the clerk's office has shown that this is not something that is in the board's jurisdiction. This was discussed at the last meeting, but one of the follow-up questions to this discussion was why there is a checkbox for the BCA (BRV for Burlington) on the voter registration form if the BRV does not need to approve these forms. Mike McGarghan asked if there should be a letter from the city attorney's office stating that the BRV holds the authority that the BCA would normally hold for this function in this form. Grace Grundhauser responded that is probably not necessary since the board can point voters directly to the city charter where this authority is given. Alison Harte asked, does the BRV

sign off on new voter registration forms on Election Day? Grace Grundhauser shared that there is a specific statute that addresses same day voter registration and that responsibility is specifically given to the ward clerk or their designee. Mike McGarghan read the section of the charter relating to the Board of Civil Authority delegating certain authorities to the Board for Registration of Voters. Mike agreed that as long as the charter language is available for people to read and review, he doesn't need to make a motion for the attorneys to draft this communication. Sarah Montgomery reported that she is also still looking into another question that was raised by the board at the last meeting about the BRV's authority to sign off on forms that are completed on Election Day. She is working with the attorney's office to clarify some ambiguities around this process and will report back with more information. Michelle Lefkowitz added that it is the ward clerk that is ultimately adding the voter to the checklist, with the BRV to Ward Clerk form, not the BRV member.

Sarah Montgomery reported that the legal resident voter registration forms and information have been translated and are available on the city website. The clerk's office will be beginning outreach on this in the next few months and hopes the board can help with this.

Sarah Montgomery reported that the last board vacancy should be posted next week and will be open for about a month before City Council makes the appointment. Grace Grundhauser shared that she was able to get a government Front Porch Forum account and can share the information there to help recruit applicants. Mike McGarghan stated that he does not use Front Porch Forum, so would appreciate if she could also share the information with the board via email. Grace Grundhauser agreed to do so. Lesley Gendron asked if there was an expectation that all wards would be represented on the board. Michelle Lefkowitz shared that historically this has not been the case; party balance is more important. Grace Grundhauser shared that requirements for party balance for the BRV is set out in city charter. Mike McGarghan added that the party balance is important so the public can be assured that there are balanced viewpoints represented.

Approval of Challenges:

A list of 23 voters was reviewed. This list of voters was presented to the board by the clerk's office, because there is a specific reason to believe the voters may not be eligible to vote in Burlington (mail sent to the voter from the clerk's office was returned as undeliverable or the voter sold their Burlington property that is listed as their legal address in their voter registration). Michelle Lefkowitz made a motion to approve challenging 22 voters, as amended to remove a duplicate entry from the original list. Seconded by Lesley Gendron. Passed unanimously.

New Business: Youth Member Appointment

William Cunningham applied to be a youth member for the board. Mike McGarghan asked what the role of a youth member is. Michelle Lefkowitz shared that the previous youth member helped with special side projects. Annie Schneider added that the previous youth member was like a full member of the board, but without voting rights; She helped with Election Day troubleshooting, helped training workers, and really contributed a lot. Mike McGarghan said he is concerned about appointing someone without fully understanding what their role would be. Grace Grundhauser said that she could add a piece about

the youth member position to the BRV job description and the board could vote on that if they would like. Sarah Montgomery added that there is also some general information about youth members serving on city boards posted on the city website.

Mike McGarghan made a motion to delay the vote until the information about what is required is clearer. There was no second for the motion.

Lesley Gendron asked if the description for the youth member could be pulled up for review. The board reviewed the description that is posted on the city website.

Michelle Lefkowitz made a motion to approve William Cunningham as a youth member. Olga Bravo seconded.

Discussion: Olga Bravo stated that this youth member will have a mentor, and it is important to encourage those who come behind us to do this important work. Mike McGarghan added that even full members will have a mentor and be trained, so that mentorship is provided to all members regardless of youth status. Lauren Ebersol added that she agrees it would be helpful to have responsibilities outlined for the board member, especially since this board holds more authority than some others do, but she doesn't think the vote needs to be delayed in order for that to happen. Lesley Gendron asked if this is something that could be determined more specifically as the board learn the specific youth member's skills and interests. Mike McGarghan noted that he thinks it is important that the parameters for a youth member are nailed down in advance of onboarding a youth member. Grace Grundhauser noted that since this will be a non-voting member, the ultimate authority will still lie with the board. Annie Schneider commented that there may be a time constraint for the applicant since it is likely in conjunction with something he is doing for school. She also offered to act as a mentor to him.

Mike McGarghan called the question. 1 voted No; 7 voted Yes: the motion passed. William Cunningham is appointed to the board as a youth member.

New Business: Voter List Maintenance

Due to time constraints, this item will be moved to the next meeting agenda.

Previous Meeting Minutes:

Michelle Lefkowitz made a motion to approve the previous meeting minutes. Seconded by Lauren Ebersol. The minutes were accepted unanimously.

Adjournment:

Meeting adjourned at 7:08pm.

Respectfully Submitted By: Sarah Montgomery, Assistant City Clerk

Voter List Maintenance

Burlington BRV September 2023 Meeting Review

The following slide shows questions the BRV emailed the Vermont Secretary of State & responses received regarding...

How does Vermont communicate with other states when a voter is added to Vermont's checklist, when that voter was previously registered in another state, and vice versa?

When a voter registers in Vermont, (a) does Vermont notify the state where they were previously registered, (b) does that happen automatically or manually, and (c) does Vermont receive confirmation from other states on what they do with that information? **Yes, when the voter provides information on the previous state, the clerk enters that information into our system, and our system e-mails that state to let them know they can remove the voter. I have also attached the VEMS manual w instructions to clerk on page 45.**

When a Vermont voter registers in a new state, (a) how is the Vermont Secretary of State's office receiving notice from that state, (b) how is that information shared with municipalities, and (c) is there a written procedure outlining this process? **We receive physical notices from states that we then distribute to the towns.**

Is there any statute that addresses whether this aspect of voter registration is in the State's purview or the municipalities'? **17 VSA 2154 requires that the SOS maintain a statewide voter checklist and contains the details you are requesting.**

Are there any resources that outline how Vermont uses the ERIC system? **The best resource would be its website <https://ericstates.org/>. You can find the bylaws here https://ericstates.org/wp-content/uploads/2023/03/ERIC_Bylaws_February_2023.pdf**

Are there any other Vermont-specific resources the BRV could read to understand this topic more? **The entirety of the voter registration statutes in Title 17 Chapter 43 and the resources on our website, including the Elections Procedure Guide <https://sos.vermont.gov/elections/>.**

Email sources cited

- VEMS manual, pages 35 and 45
- 17 V.S.A. § 2154 -
<https://legislature.vermont.gov/statutes/section/17/043/02154>
- <https://ericstates.org/>
- [https://ericstates.org/wp-content/uploads/2023/03/ERIC Bylaws February 2023.pdf](https://ericstates.org/wp-content/uploads/2023/03/ERIC_Bylaws_February_2023.pdf)
- Vermont Statutes Chapter 43 -
<https://legislature.vermont.gov/statutes/chapter/17/043>
- Vermont Secretary of State Election Procedures Guide -
<https://sos.vermont.gov/elections/>

VEMS manual | excerpts

“When a voter registers in Vermont, from another State, the previous state of registration is provided notification via email automatically from the VEMS system.” Page 35

“Voter Registers in Another State: A voter may be purged if you receive an email or paper notice from another state notifying you that one of a voter has registered in their state.” Page 45

17 V.S.A. § 2154 | Excerpt

*The Secretary of State shall maintain a uniform and nondiscriminatory statewide voter checklist. This checklist shall serve as the official voter registration list for all elections in the State. **In maintaining the statewide voter checklist, the Secretary shall...make reasonable efforts on an ongoing basis to compare the information on the checklist with data or information contained in any State agency's database, a database administered by the federal government, or any database of another state or consortium of states, where possible, in an effort to maintain the accuracy and currency of the checklist.***

Subsection (a)(6)

ERIC | Additional info

- <https://ericstates.org/about/>
- Election Registration Information Center (ERIC)
- Implemented March 2023
- Currently ~ 25 states plus DC participate.
- States share checklists and DMV info every 60 days.
- SSA death records are also compared.

The rest of this slide deck goes beyond the VT Secretary of State email and reflects some basic information available at [justice.gov](https://www.justice.gov) and the U.S. Elections Assistance Commission website that may be useful to our discussion.

Federal laws governing voter registration

- Federal laws governing voter registration:
 - Voting Rights Act (1964)
 - National Voter Registration Act (1994)
 - Help America Vote Act (2002)

Justice.gov FAQ on National Voting Rights Act

- <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra>
- FAQs 26–40
- Section 8 – Administration of Voter Registration
- Section 8(d) – notice process for states to verify a voter's eligibility after the voter's change of residence
- States must have “general program” to identify & remove these voters
 - Reasonable effort
 - Uniform
 - Non-discriminatory
 - Complete 90 days before a federal election
- State discretion on program design; variety of approaches

Justice.gov FAQ #35

Does the NVRA create a “safe harbor” procedure under which States can satisfy their obligation to conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the voter rolls due to a change of residence?

Yes. The NVRA gives one example of a safe harbor procedure. Under that procedure, States may utilize change-of-address information supplied by the United States Postal Service through its National Change of Address program (NCOA) to identify registrants who may have changed residences and then take one of two actions.

A) If it appears from the NCOA information that the person has moved to a different residence in the same registrar’s jurisdiction, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid, pre-addressed return form by which the registrant may verify or correct the address information.

B) If it appears that the registrant has moved to a residence outside the registrar’s jurisdiction, the registrar uses the NVRA’s Section 8(d) notice process and may remove the registrant from the voter rolls after satisfying all requirements of that process.

Justice.gov FAQ #36

Do States have to use the [United States Postal Service National Change of Address program (NCOA)] process to initiate the notice process?

No. States do not have to use the NCOA process. Under the NVRA, States must have a general program that makes a reasonable effort to identify and remove the names of voters who have become ineligible to vote by means of a change of address. The program has to be uniform, non-discriminatory, in compliance with the Voting Rights Act and must be completed 90 days before a federal election. States otherwise have discretion under the NVRA and HAVA in how they design their general program, and States currently undertake a variety of approaches to how they initiate the notice process.

For example, some general programs involve a State undertaking a uniform mailing of a voter registration card, sample ballot, or other election mailing to all voters in a jurisdiction, and then using information obtained from returned non-deliverable mail as the basis for correcting voter registration records (for apparent moves within a jurisdiction) or for initiating the notice process (for apparent moves outside a jurisdiction or non-deliverable mail with no forwarding address noted).

Another example involves general programs where States initiate the notice process based on information showing that a voter has not voted in elections nor made contact with a registrar over some period of time. This is not prohibited by the NVRA and its bar on removing voters from the list solely for failure to vote, since it relies on the NVRA notice process, and thus utilizes both a notice and a waiting period of two federal general elections.

U.S. Election Assistance Commission website

“Voter list maintenance is the process election officials use to maintain accurate and up to date voter lists. It includes adding, updating, and removing voters from lists. Officials must follow appropriate state and federal laws, including the National Voter Registration Act, to determine whether a voter should be removed from a list. Maintaining an accurate voter registration list is essential to protecting election integrity. Americans deserve an election system that produces an accurate result based on each eligible voter casting a single ballot in their proper jurisdiction. Maintaining an accurate voter list benefits voters because it lowers the likelihood of lines at the polls, reduces voter confusion, and decreases the number of provisional ballots. Updated records also allow election administrators to plan, better manage their budgets and poll workers, and improve voter experience.”

<https://www.eac.gov/election-officials/voter-lists-registration-confidentiality-and-voter-list-maintenance>

U.S. Election Assistance Commission website

“At a minimum, the staff leading voter list maintenance activities should understand federal and state voter list maintenance responsibilities including the NVRA, HAVA, and other requirements....Election officials should invest in the continued training of staff, including providing opportunities to participate in state led NVRA and other list maintenance trainings.”

Best Practices Guide on List Maintenance

[https://www.eac.gov/sites/default/files/electionofficials/VoterList/Best Practices Voter List Maintenance V1 508.pdf](https://www.eac.gov/sites/default/files/electionofficials/VoterList/Best_Practices_Voter_List_Maintenance_V1_508.pdf)

U.S. Election Assistance Commission website

- Fact Sheet on List Maintenance:

[https://www.eac.gov/sites/default/files/electionofficials/VoterList/Voter List Maintenance Overview V2 508.pdf](https://www.eac.gov/sites/default/files/electionofficials/VoterList/Voter%20List%20Maintenance%20Overview%20V2%20508.pdf)

Prepared by Grace Grundhauser, Chair for the Board for Registration of Voters August 30, 2023

Hi Sarah,

See I missed closing the loop on this. My only lingering thought on this is that if they don't post the list, the public won't be on notice to weigh in as to eligibility. For example, if a person is on that list, a member of the public may come forward and offer information to support to dispel their removal from the voter list. It is a balance of not unnecessarily releasing too much information while also making sure there is compliance with the open meeting law. I don't know if this is a practical concern or not, but I think perhaps raise it to the Board and let them make the final call.

Hayley

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

From: Sarah Montgomery

Sent: Wednesday, August 30, 2023 1:56 PM

To: Hayley McClenahan

Subject: RE: INQ: open meeting law

Hi Hayley,

Thank you for the quick response on this! This is helpful. There are documents with voter data that is public record, but that the board feels uncomfortable posting publicly as part of their agenda. Specifically, lists of voters that we have reason to believe may not be eligible to vote in Burlington any longer. Would your opinion be that it would be in line with best practice for them to review that list privately, and just state in discussion something like, "A list of 24 voters was reviewed..."? Of course, if there was a public record request, we could provide them the full list.

Thank you!
Sarah

From: Hayley McClenahan

Sent: Wednesday, August 30, 2023 12:49 PM

To: Sarah Montgomery

Subject: RE: INQ: open meeting law

Hi Sarah,

The open meeting law doesn't explicitly define an agenda or what materials need to be posted with it. However, the guidance from the SOS is as follows, "In keeping with the law's intent, an agenda should allow interested members of the public to be reasonably informed about what specific topics will be discussed, and what actions may be taken, at the meeting."

I would say that if it isn't possible for members of the public to understand fully what the body will be taking action without posting the documents, best practice would be to post it. If the documents contain information that would be otherwise withheld under the PRA, we can do a public version with

redactions and private version without just for the Board. I'm not sure what documents are at issue with this particular Board – if getting the documents to a place where they can be publically shared is going to be challenging due to the bandwidth needed, maybe a summary or some similar document can be prepared for meetings.

I hope this gives you some clarity – happy to discuss further as needed.

Best,

Hayley

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

From: Sarah Montgomery

Sent: Wednesday, August 30, 2023 12:03 PM

To: Hayley McClenahan

Subject: INQ: open meeting law

Hi Hayley,

Not sure if this is a question that is your area of expertise, so feel free to redirect me!

Does open meeting law outline whether a board needs to share documents that they are discussing and/or voting on in a public meeting? This came up at a recent Board for Registration of Voters meeting, and with this board moving to Civic Clerk, I imagine we will receive more questions about which documents should and should not be posted publicly. There are documents that we generally just share with the board via email, but am wondering if there is something that outlines best practice around this.

Thank you!

Sarah