



# Elections Emergency Planning Task Force

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Report to the Legislature

Prepared by the Office of the Minnesota Secretary of State

[Date of Task Force Approval]

# Table of Contents

- I. Background ..... 1
  - A. Enabling Legislation..... 1
  - B. Task Force Membership..... 1
- II. Task Force Research..... 2
  - A. Meeting One – July 29, 2015..... 2
    - i. Overview of Minnesota Election Laws Related to Emergencies..... 3
    - ii. Presentation from the National Association of Secretaries of State ..... 4
  - B. Meeting Two – August 19, 2015 ..... 6
    - i. Overview of Minnesota Election Process..... 6
    - ii. Overview of Continuity of Operations Planning ..... 7
    - iii. Review of the Governor’s Chapter 12 Emergency Authority..... 10
    - iv. Review of Emergency Plans Provided by Other States ..... 12
  - C. Meeting Three – September 3, 2015 ..... 13
    - i. Review of State Laws Allowing Special Emergency Election Procedures ..... 13
    - ii. Presentation on Contingency Planning: Resources or Strategies ..... 14
  - D. Meeting Four – October 20, 2015..... 16
  - E. Meetings Five and Six—November 17 and December 15, 2015 ..... 17
- III. Task Force Recommendations Regarding the Creation of Elections Emergency Plans ..... 17
  - A. The Office of the Secretary of State should be required to create a state elections emergency plan ..... 17
  - B. Each County should create a local elections emergency plan for use in all elections within the County..... 18
  - C. Cities, Towns, and School Districts should be permitted to create their own elections emergency plan..... 19
  - D. Counties and those local jurisdictions that create an emergency plan must file the plan with the Office of the Secretary of State ..... 19
  - E. The effective date for legislation should require elections emergency plans no sooner than September 1, 2016..... 19

- IV. Task Force Recommendations Regarding Elections Emergency Procedures and Authority ..... 20
  - A. Local election officials should have expanded authority to relocate or consolidate polling locations in cases of an emergency..... 20
  - B. Local election officials should have the authority to expand polling place hours in very limited circumstances ..... 21
  - C. State officials should have expanded authority to address emergencies impacting elections ..... 21
- V. Task Force Recommended Legislation..... 22

# I. Background

## A. Enabling Legislation

The Elections Emergency Planning Task Force (“the Task Force”) was established by the Minnesota Legislature in 2015. See 2015 Minn. Laws, Ch. 70, Art. 1, Sec. 61. The Task Force was established to research issues related to emergencies affecting elections and make recommendations to the legislature. The enabling legislation did not specify a required number and frequency of Task Force meetings, but instead required that the Task Force meet for the first time no later than August 1, 2015, and submit a final report no later than January 1, 2016.

The enabling legislation identified topics for the Task Force to consider and required the report to be submitted to the “chairs and ranking minority members of the committees in the senate and house of representatives with primary jurisdiction over elections, summarizing its findings and listing recommendations for the development of elections emergency plans statewide. The report shall include draft legislation to implement the recommendations of the task force.” 2015 Minn. Laws, Ch. 70, Art. 1, Sec. 61.

The Legislative Coordinating Commission provided staff support to facilitate the Task Force’s work. 2015 Minn. Laws, Ch. 70, Art. 1, Sec. 61 and 62.

## B. Task Force Membership

The Task Force consisted of fourteen members, and the membership of the Task Force was established by the legislature. Membership consisted of elections officials, emergency planning and management experts representing state and local emergency planning authorities, state election officials, and members of the legislature.

The Elections Emergency Planning Task Force consisted of the following appointed members:

- (1) The director of the Department of Public Safety, Division of Homeland Security and Emergency Management, or designee: **Director Joe Kelly;**
- (2) the secretary of state, or designee: **Secretary of State Steve Simon;**
- (3) one individual designated by the secretary of state, from the elections division in the Office of the Secretary of State: **Director of Elections, Gary Poser;**
- (4) one individual appointed by the Minnesota State Council on Disability: **Accessibility Specialist, Margot Imdieke Cross;**
- (5) the Minnesota Adjutant General, or designee: **Major Taylor Cox;**

(6) one county auditor, appointed by the Minnesota Association of County Officers: **Crow Wing County Administrative Services Director, Deborah Erickson;**

(7) one local professional emergency manager, appointed by the Association of Minnesota Emergency Managers: **Director of the Office of Emergency Management for the City of Minneapolis, Barret Lane;**

(8) one town election official, appointed by the Minnesota Association of Townships: **Becker Township Clerk, Lucinda Messman;**

(9) one city election official, appointed by the League of Minnesota Cities: **Minneapolis Elections Director, Grace Wachlarowicz;**

(10) one school district election official, appointed by the Minnesota School Boards Association: **Executive Assistant to the Stillwater Superintendent, Barb Proulx;**

(11) one representative appointed by the speaker of the house of representatives: **Representative Kelly Fenton;**

(12) one representative appointed by the minority leader of the house of representatives: **Representative Mike Nelson;**

(13) one senator appointed by the senate majority leader: **Senator Katie Sieben;** and

(14) one senator appointed by the senate minority leader: **Senator Mary Kiffmeyer.**

At the first meeting of the Elections Emergency Planning Task Force, the Task Force elected Secretary Simon as Task Force Chair and Debby Erickson as Task Force Vice-Chair. The Elections Emergency Planning Task Force held six meetings, meeting monthly from July 2015 through December 2015.

## **II. Task Force Research**

The Elections Emergency Planning Task Force held six meetings, the first three dedicated to gathering information and educating the Task Force membership on election administration, emergency management, and emergency planning. The Task Force heard presentations from members of the Task Force, national experts, and staff. This research and information gathering guided the final three meetings that focused on discussion and development of recommendations as required by the enabling legislation.

### **A. Meeting One – July 29, 2015**

At the first meeting of the Emergency Planning Task Force, the Task Force heard two presentations. The first presentation provided an overview of Minnesota's current statutes that address emergencies related to elections and a second presentation from the National

Association of Secretaries of State on elections emergency planning.

***i. Overview of Minnesota Election Laws Related to Emergencies***

Staff from the Minnesota Office of the Secretary of State presented an overview of the current Minnesota election laws related to emergencies. Minnesota law only specifically addresses election-related emergencies in three areas: (1) emergency election judge vacancies; (2) inoperable polling locations on election day; and (3) the postponement of local elections.

With respect to emergency election judge vacancies, Minnesota law allows election judges to choose a replacement election judge from voters if there is an unexpected vacancy on election day. Specifically, Minnesota law states:

A vacancy on an election board occurs when any election judge who is a member of that board:

(a) fails to arrive at the polling place within 30 minutes after the time when the polling place is scheduled to open;

(b) becomes unable to perform the duties of the office after assuming those duties; or

(c) for any reason fails or refuses to perform the duties of the office as assigned by the head election judge.

When a vacancy occurs, the remaining election judges of the precinct shall elect an individual to fill the vacancy subject to the provisions of section 204B.19. When possible the election judges shall elect individuals who have been trained as election judges pursuant to section 204B.25. The oath signed by the new election judge shall indicate that the new election judge was elected to fill a vacancy. The municipal clerk may assign election judges to fill vacancies as they occur.

Minn. Stat. § 204B.23 (2014). Minnesota law further requires counties to provide a procedure for the emergency training of an election judge selected to fill a vacancy. Minn. Stat. § 204B.25, subd. 1 (2014). This statutory section provides a procedure for addressing a vacancy in one or a small number of election judge positions, but does not address scenarios where a large number of election judges are unable to serve on election day.

The second election emergency procedure in current Minnesota law is the statutory procedure for relocation of polling locations. Minnesota Statutes section 204B.16 allows an election judge to move a polling place if the designated polling location is determined to be “unusable” on election day. Minn. Stat. § 204B.16, subd. 7 (2014). The local election official

must approve the new polling location and the polling location must meet all other statutory criteria including the requirement that the polling location be located within the precinct or within one mile of the precinct. *Id.* This statutory section does not allow an election official to move the polling place prior to election day even if the election official knows that the polling location has become unusable. Further, this section does not allow consolidation of polling locations.

The final election emergency procedure in current Minnesota law allows for the postponement of a county, city, or town election if it is not held in conjunction with a state election and if:

[T]he National Weather Service or a law enforcement agency has issued storm warnings or travel advisories such that the clerk determines travel to a polling place would be difficult or hazardous for voters and election judges[.]

See Minn. Stat. §§ 205.105 (municipal elections); 205A.055 (school district elections); and 373.50 (county elections) (2014). These provisions do not allow for the postponement of an even-year state primary or state general election.

Finally, staff from the Office of the Secretary of State presented on potential emergencies that could affect elections in Minnesota as well as the scope of work on election day. The scope of work on a state general election day in 2014 included:

- Approximately 3,000 physical polling locations
- Over 28,600 election judges
- Over 1.7 million in-person voters

In 2012, a presidential election year, there were nearly one million more in-person voters, with 2.6 million Minnesotans voting in person on election day.

## ***ii. Presentation from the National Association of Secretaries of State***

The Elections Emergency Planning Task Force next heard a presentation from John Milhofer with the National Association of Secretaries of State (NASS). Mr. Milhofer presented on a NASS report on State Laws and Practices for the Emergency Management of Elections. The report was a result of a NASS Task Force on Emergency Preparedness for Elections following the effects of Hurricane Sandy on the 2012 presidential election. The NASS report focused on the following issues:

- State laws authorizing the postponement of elections in an emergency;
- Election contingency plans and other elections emergency plans;
- Voting by individuals responding to or impacted by an emergency; and
- The intersection of state election officials, state emergency officials, and the federal

government in an emergency impacting an election.

NASS conducted a survey with 37 states responding and, of those 37 states, only 12 indicated that they had statutory authorization to delay, suspend, or postpone an election. Although NASS identified at least 12 states that had the authority to delay, suspend, or postpone an election, NASS could not identify any examples of a federal general election being postponed or delayed. NASS noted that the ability of a state to postpone a federal election is not clear, but that a Congressional Research Service Report indicated that states “appear” to have the authority to reschedule federal elections when “exigent” circumstances necessitate postponement.

NASS also examined those states that had election contingency plans for emergency situations. The majority of the 37 states that responded to the survey said that they had developed elections emergency plans, procedures, or advisory materials. Mr. Milhofer reported that California recently passed a law requiring the Secretary of State to work with local officials to develop procedures for voting in case of an emergency. Mr. Milhofer also reported that the Connecticut Secretary of State is required to develop a model contingency plan for municipalities that the municipalities can then use to create their own plans. Under Connecticut law, however, if the municipality fails to create its own plan it is required to adopt the Secretary of State’s plan.

In examining the issue of those voting during an emergency, NASS examined the impact of Hurricane Sandy. Though Hurricane Sandy’s impact was not as extensive as initially expected, it had a large impact on the election with 250 polling places relocated due to the storm. NASS reported that both New York and New Jersey relied on executive orders to make changes in order to facilitate voting. For example, New Jersey designated those voters impacted by the storm as overseas voters which allowed voters to use the overseas voter provision allowed under the federal Military and Overseas Voter Empowerment Act (MOVE Act) and Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). This allowed New Jersey voters to receive a blank ballot electronically and return the completed ballot and application materials electronically. Maryland also allowed voters to receive a blank ballot electronically using the MOVE Act and UOCAVA procedures. Implementing these changes relied heavily on emergency communication procedures, including reverse 911 procedures, webpages, text messages, and other communication channels.

Mr. Milhofer noted that, though federal assistance is available in some circumstances to offset costs of an elections emergency, it is limited and only available in those circumstances where the President has declared an emergency. Where the President has declared an emergency, states and local jurisdictions may have assistance in offsetting the costs of procuring equipment to replace damaged voting equipment, costs associated with polling place relocation, and ancillary costs associated with items such as generators or tents.

In concluding his remarks, Mr. Milhofer referred members of the Task Force to the NASS



Report and to those state materials posted on the NASS Elections Emergency Planning Task Force webpage.

## **B. Meeting Two – August 19, 2015**

The second meeting of the Elections Emergency Planning Task Force again focused on information gathering. At this meeting the Task Force heard four presentations. The first presentation provided an overview of Minnesota’s election system; the second presentation reviewed the basics of continuity of operations planning; the third presentation provided a review of the emergency authority in Minnesota Statutes Chapter 12; and the final presentation provided a review of emergency plans prepared by other states.

### ***i. Overview of Minnesota Election Process***

Election Emergency Planning Task Force member and Minnesota Director of Elections, Gary Poser, presented an overview of Minnesota’s election system. Mr. Poser began the presentation by reviewing each level of government’s responsibilities in administering an election, including the following information:

- **Secretary of State:** The Secretary of State serves as the state’s chief election official. The duties of the Secretary of State include:
  - Training and certification of county election administrators;
  - Administering the Statewide Voter Registration System (SVRS) and its interface with:
    - Department of Public Safety, Division of Driver and Vehicle Services
    - Social Security Administration
    - Department of Health
    - Voter Tools
  - Administering the database of candidates and election results;
  - Certifying election equipment; and
  - Conducting data matches from various databases and providing data to County Auditors.
  
- **County Auditors:** The administration of elections is just one of the many duties of counties, including responsibility for:
  - All aspects of voter registration within the county, including:
    - Verifying voter data with the Department of Public Safety, Division of Driver and Vehicle Services and the Social Security Administration;
    - Sending non-forwardable postcards to voters to verify registration addresses;
    - Reviewing data in SVRS on deaths, felony convictions, guardianships, non-citizens, and applying or removing “challenge” designations.
  - Forwarding of information to the county attorney about potential violations

- as appropriate;
  - Ballot layout and printing for state elections;
  - Purchasing and maintaining of election supplies and equipment;
  - Programing and testing all voting equipment;
  - Issuing absentee ballots;
  - Training and certifying city, town, and school district election officials;
  - Training and certifying election judges;
  - Compiling election results and transmitting the results to the Secretary of State; and
  - Conducting post-election audits.
- **Municipal Clerks:** Municipal Clerks are responsible for the administration of elections on election day, including:
    - Hiring election judges and assigning judges to precincts (and training and certifying those judges if delegated by the county);
    - Supervising election judges on election day;
    - Determining polling locations;
    - Administering health care absentee voting; and
    - Administering absentee voting if delegated by the county.

Mr. Poser further explained the different methods of voting in Minnesota. In Minnesota, in addition to the ability to vote in-person on election day, voters may cast a ballot by absentee either in person or by mail. Further, voters in certain jurisdictions presumptively cast a ballot by mail – in these precincts all registered voters receive a ballot by mail. Finally, for those voters in the military or living overseas, those voters can vote through special military and overseas voting procedures.

## ***ii. Overview of Continuity of Operations Planning***

Elections Emergency Planning Task Force member and representative of the Minnesota Adjudicate General, Major Taylor Cox, presented on the principles of continuity of operations planning and reviewed Minnesota’s Continuity of Government Plan development process. Major Cox began the presentation by reviewing changes at the state and national level related to emergency planning that were made following the September 11, 2001 terrorist attacks. These changes included structural changes such as the establishment of the federal Department of Homeland Security and business process changes reflected in Continuity Directives and Continuity Circulars prepared by the Department of Homeland Security.

Major Cox provided an overview of the resources and reference materials available to those creating a continuity of operations and continuity of government plans, including the Continuity Directives and guides prepared by the Department of Homeland Security. The Continuity Directives cover the Federal Executive Branch and serve as a directive to those within the Executive Branch on how to conduct continuity preparation and continuity

operations. In contrast, the Continuity of Government Circulars do not serve as a directive but instead provide guidance and recommendations to non-federal entities, including states and tribes. These federal guides, in combination with state requirements such as the Governor's Executive Orders regarding emergency planning, the Minnesota Emergency Operations Plan, and Minnesota Statutes, govern emergency planning in Minnesota.

Major Cox presented on the distinction between continuity of operations and continuity of government planning. Continuity of government planning is defined at the national level as “[a] coordinated effort within each branch of government to ensure the National Essential Functions continue to be performed during a catastrophic emergency.” (National Continuity Policy Implementation Plan, 2007). Continuity of operations, in contrast, describes how agency mission-essential functions remain operational under emergency conditions until affected offices and essential personnel are relocated to alternate sites. These two types of plans work together with the Continuity of Government plan being the overriding responsibility of the government, and each agency supports the Continuity of Government with the agency's Continuity of Operations plan.

Continuity of Government and Continuity of Operations plans have essential components needed for the development of a comprehensive plan. Major Cox presented on ten essential components, specifically:

1. **ESSENTIAL FUNCTIONS.** The identification and prioritization of essential functions is a prerequisite for continuity planning, because they establish the planning parameters that drive an organization's efforts in all other planning and preparedness areas.
2. **ORDERS OF SUCCESSION.** Non-federal entities are responsible for establishing, promulgating, and maintaining orders of succession to key positions.
3. **DELEGATIONS OF AUTHORITY.** To ensure a rapid response to any emergency requiring the implementation of its continuity plan, an organization should delegate authorities for making policy determinations and other decisions, at the field, satellite, and other organizational levels, as appropriate.
4. **CONTINUITY FACILITIES.** As part of their continuity planning, all non-federal entities should identify continuity facilities; alternate uses for existing facilities; and, as appropriate, virtual office options including telework.
5. **CONTINUITY COMMUNICATIONS.** The ability of an organization to execute its essential functions at its continuity facilities depends on the identification, availability, and redundancy of critical communications and information technology (IT) systems to support connectivity among key leadership personnel, internal organization elements, federal and other non-federal entities, critical customers, and the public, during crisis and disaster conditions.

6. VITAL RECORDS MANAGEMENT. Another critical element of a viable continuity plan and program includes the identification, protection, and availability of electronic and hardcopy documents, references, records, information systems, and data management software and equipment (including classified and other sensitive data) needed to support essential functions during a continuity situation.
7. HUMAN CAPITAL. During a continuity event, emergency employees and other special categories of employees will be activated by an organization to perform assigned response duties. One of these categories is continuity personnel, referred to as the Emergency Relocation Group (ERG) members.
8. TEST, TRAINING, AND EXERCISE (TT&E) PROGRAM. An effective TT&E program is necessary to assist organizations to prepare and validate their organization's continuity capabilities and program to perform essential functions during any emergency.
9. DEVOLUTION OF CONTROL AND DIRECTION. Devolution is the capability to transfer statutory authority and responsibility for essential functions from an organization's primary operating staff and facilities to other organization employees and facilities, and to sustain that operational capability for an extended period.
10. RECONSTITUTION OPERATIONS. Reconstitution is the process by which surviving and/or replacement organization personnel resume normal operations from the original or replacement primary operating facility. Reconstitution embodies the ability of an organization to recover from an event that disrupts normal operations and consolidates the necessary resources so that the organization can resume its operations as a fully functional entity.

In reviewing these core components, Major Cox discussed the first component – Identification of Essential Functions. Major Cox reviewed the eight essential functions that have been identified for the federal government as well as the eight essential functions identified for Minnesota's Government. The role of elections is not specifically named in any of the federal or state essential functions, but Major Cox opined that it could be considered included in essential function one. On both the state and federal level, essential function one is "Maintain[ing] Continuity of Government." At the state level, this essential function is described as:

**Maintain Continuity of Government.** Ensure the continued functioning of critical government leadership elements, including: succession to key offices; organizational communications; leadership and management operations; situational awareness and personnel accountability. Each branch of government will identify the various subordinate mission essential functions necessary to accomplish this overarching mission.

### ***iii. Review of the Governor's Chapter 12 Emergency Authority***

Elections Emergency Planning Task Force member and Director of Minnesota Homeland Security and Emergency Management, Joe Kelly, provided an overview of the emergency authority established in Minnesota Statutes Chapter 12. This statutory chapter provides the Governor emergency and disaster powers as well as:

- Creating the Division of Emergency Management (DEM);
- Requiring local government emergency management agencies;
- Conferring emergency and disaster powers upon governing bodies of political subdivisions;
- Providing for rendering of mutual aid among political subdivisions, other states, and Canadian provinces;
- Making financial assistance available to the state and eligible applicants as a result of natural or other disasters;
- Specifying DEM duties and responsibilities, including emergency management training;
- Requiring a state emergency operations plan;
- Directing nuclear power plant emergency response planning;
- Giving the Governor general direction and control of emergency management; and
- Giving the Governor direct operational control during: (1) a national security emergency; (2) nuclear power plant emergency; or (3) energy supply emergency declared by the executive council or legislature.

Director Kelly also presented on who has the authority to declare an emergency. Under Chapter 12, local emergencies may be declared only by a mayor or a county board chair. If a local emergency is to extend beyond three days, it must be extended by the locality's governing body. These local emergency declarations can:

- Invoke necessary portions of local disaster plans;
- Authorize aid and assistance under local disaster plans;
- Make necessary resources available;
- Enter into contracts and incur obligations to provide fast emergency aid; and
- Suspend time consuming procedures and formalities.

At the state level, the Governor is responsible for declaring an emergency. An emergency may be a national security emergency or a peace time emergency. The definition of a national security emergency and a peace time emergency is contained in Minnesota Statutes, section 12.31. Specifically, a national security emergency is defined as follows:

When information from the President of the United States, the Federal Emergency Management Agency, the Department of Defense, or the National Warning System indicates the imminence

of a national security emergency within the United States, which means the several states, the District of Columbia, and the Commonwealth of Puerto Rico, or the occurrence within the state of Minnesota of a major disaster from enemy sabotage or other hostile action, the Governor may, by proclamation, declare that a national security emergency exists in all or any part of the state.

Minn. Stat. § 12.31, subd. 1 (2014). In the case of a national security emergency the Governor may convene “immediately both houses of the legislature.” *Id.* Further, the Governor may exercise his or her national security emergency authority “for a period not to exceed 30 days.” *Id.* During a national security emergency the Governor may exercise the powers and duties established in Minnesota Statutes, sections 12.31, 12.37 and 12.381. Examples of the Governor’s emergency authority in a national security emergency include:

- Authorizing and directing assistance between political subdivisions;
- Requiring any person to perform services of emergency management;
- Commandeering vehicles, tools, appliances, medical supplies, other personal property, and facilities for emergency management services;
- Entering into contracts and incur obligations to provide fast emergency aid;
- Suspending time consuming procedures and formalities;
- Temporary waiving of fees; and
- Directing measures to provide for the safe disposition of dead human bodies.

These powers are specifically authorized in relation to a national security emergency declared by the Governor.

Director Kelly presented on the Governor’s scope of authority in relation to peacetime emergencies. Under Minnesota law,

[a] peacetime declaration of emergency may be declared only when an act of nature, a technological failure or malfunction, a terrorist incident, an industrial accident, a hazardous materials accident, or a civil disturbance endangers life and property and local government resources are inadequate to handle the situation.

Minn. Stat. § 12.31, subd. 2(a) (2014). Peacetime emergencies, in contrast to national security emergencies, may be declared by the Governor for only five days. *Id.* A peacetime emergency can be extended by a resolution of the Executive Council for up to 30. *Id.* The legislature may terminate a peacetime emergency extending beyond 30 days by a majority vote of both bodies of the legislature. Minn. Stat. § 12.31, subd. 2(b) (2014). Examples of the Governor’s peacetime emergency authority include:

- Invoking necessary portions of the state emergency operations plans;
- Authorizing aid and assistance under the emergency operation plans;

- Entering into contracts and incurring obligations to provide fast emergency aid;
- Suspending time consuming procedures and formalities;
- Temporary waiving of fees; and
- Activating emergency personnel.

In reviewing both the Governor’s peacetime and national-security emergency authority, Director Kelly indicated that the use of peacetime emergency authority has been the authority that has most commonly been exercised by the Governor. Finally, Director Kelly noted that there is no mention of elections in Chapter 12. Because of this, Director Kelly testified that the scope of the Governor’s authority in relation to elections is unclear.

#### ***iv. Review of Emergency Plans Provided by Other States***

Staff from the Office of the Minnesota Secretary of State provided an overview of emergency plans developed by other states. These plans were provided to the Task Force in order to give examples of the different approaches that other states have taken when planning for emergencies impacting elections.

The first plan provided was an example of a current plan in use for Minneapolis elections. Under current Minnesota law each jurisdiction is free to create its own plan within the bounds of state law but are not required to create a plan. Very few jurisdictions in Minnesota have specific plans addressing emergencies impacting elections. Of those jurisdictions in Minnesota with additional emergency plans, like Minneapolis, those jurisdictions have generally limited those plans to additional guidance to poll workers for addressing an emergency.

The first state elections emergency plan reviewed by the Task Force was Colorado’s elections emergency plan. Colorado’s administrative rules require that local jurisdictions create an elections emergency plan, and the state has created a “how to” guide for elections emergency planning. The Colorado guide does not provide a sample elections emergency plan, but instead provides sample responses and sample plans for specific scenarios.

The Task Force members next reviewed Connecticut’s elections emergency plan. Similar to Colorado, Connecticut requires local jurisdictions to create an emergency plan. But, unlike Colorado, if the local jurisdictions do not create an emergency plan, Connecticut law requires the jurisdiction to adopt a general local emergency plan created by the state. The default plan created by Connecticut is part of Connecticut’s administrative rules.

The Task Force also reviewed California’s elections emergency plan. California, like Colorado, has developed a guide for local jurisdictions to use when creating an emergency plan, but unlike Connecticut does not require that local jurisdictions adopt a state default emergency plan. California has specific emergency procedures that may be authorized by the Governor in cases of emergency and the California guide contains both information on emergency planning under say-to-day election laws, and emergency planning in the case of a declared

emergency.

Finally, the Task Force reviewed a report and sample emergency plans prepared by the Wisconsin Government Accountability Board. The Wisconsin Government Accountability Board report examined the various national approaches to elections emergency planning as well as the status of elections emergency plans within Wisconsin. In addition to the recommended emergency procedures and plans, the report is unique in that it evaluates the content of local jurisdictions' emergency plans and provides multiple sample plan templates for use by local jurisdictions.

### **C. Meeting Three – September 3, 2015**

The third meeting of the Emergency Planning Task Force was the last meeting focused on information gathering. At this meeting the Task Force heard two presentations. The first presentation provided an overview of other states' laws allowing for special emergency procedures in an election emergency. The second presentation was from a national organization reviewing resources and strategies for elections emergency contingency planning.

#### ***i. Review of State Laws Allowing Special Emergency Election Procedures***

Staff from the Office of the Secretary of State presented on election emergency procedures authorized in other states' laws. The election emergency procedures fell into six categories:

- Postponement of elections;
- Polling place location changes and polling place consolidation;
- Changes in the method of conducting the election;
- Special procedures for emergency personnel and first responders;
- Emergency ballot replacement or emergency absentee voting procedures; and
- Extension of polling place hours.

Because the authority to postpone an election was covered in the presentation by the National Association of Secretaries of State, the presentation by the Secretary of State's Office focused on the remaining categories of emergency authority authorized by states.

With respect to polling place location changes or consolidation, the Office of Secretary of State cited the states of California, Florida, and Hawaii as examples of those states that authorize the relocation of polling locations. California allows a satellite voting location to be moved to a new location within the county with 48 hours' notice in the case of an emergency. California Election Code § 3018(b). Florida allows a polling place to move outside the precinct if there is an emergency within the precinct, and the only restriction on location is that it be "safe and convenient." Florida Stat. § 101.74. Hawaii allows for the relocation or consolidation of a polling location in the case of a natural disaster only. Hawaii Rev. Stat. § 11-92.3.



In addition to polling place relocation, Hawaii allows for a change in the method of administering an election in the case of an emergency or natural disaster. In Hawaii, the chief election official or a county clerk can decide to move from in-person voting to vote by mail in the case of a natural disaster impacting an election. This change would mean that, instead of voters casting a ballot in-person at a polling location, each registered voter would receive a ballot in the mail and would return that ballot via mail.

Staff from the Office of the Secretary of State presented that the most common special emergency election procedure in states' laws is related to emergency procedures for first responders. California, for example, has different procedures for emergency professionals who are dispatched within the state and outside of the state in response to an emergency. In the case of an emergency outside of California, the Governor can issue an executive order that would allow emergency workers to receive a ballot by electronic means (e.g. fax or email). California Election Code § 3021.5. For in-state workers, California allows emergency workers to cast a ballot outside of their regular polling location. California Election Code § 14313. Many other states have procedures for emergency workers and first responders. In Louisiana, emergency workers who are called out of state can receive a ballot by fax or email. Louisiana Stat. § 18:1308. Similarly, in Maine emergency workers are able to receive a ballot by email. Maine Stat. § 21.663. Mississippi allows emergency workers to receive a ballot by email or fax, but limits the definition of emergency workers to "trained or certified" workers. Mississippi Stat. §§ 23-15-673; 23-15-699. Other states such as New Hampshire, Oklahoma, and others also provide specific alternative voting procedures for emergency personnel.

Finally, staff from the Office of the Secretary of State presented on states with emergency voting procedures that applied to all voters. Alabama, for example, gives the Secretary of State emergency authority to promulgate rules that would facilitate voting for all absentee voters. Alabama Stat. § 17-11-3. Similarly, Utah allows the Lieutenant Governor to designate alternative means of transmitting and casting absentee ballots for all voters in the event of an emergency. Utah Stat. § 20A-1-308. The all-mail ballot election state of Washington allows voters in any circumstance to download a replacement ballot if their ballot is lost or damaged. Washington Stat. § 29A.40.070. Finally, South Dakota allows county auditors to extend polling place hours in the case of an emergency. South Dakota gives the county auditor the authority to extend hours until the emergency has been resolved. South Dakota Stat. § 12-2-4.

## ***ii. Presentation on Contingency Planning: Resources or Strategies***

The Elections Emergency Planning Task Force heard a presentation from Tammy Patrick, senior advisor of the Democracy Project with the Bipartisan Policy Center, on resources and strategies for election contingency planning. Ms. Patrick's presentation was informed both by her previous work in the Maricopa County Elections Office in Arizona and her service on the Presidential Commission on Election Administration. Ms. Patrick's presentation used

Hurricane Sandy in 2012 as a case study, but also reviewed different approaches for the development of contingency and recovery plans as well as the ability to use technology to aid in the administration of an election during an emergency.

Ms. Patrick began her presentation by using Hurricane Sandy as a case study. Ms. Patrick reported that, because of the scope and scale of Hurricane Sandy's multi-state impact, first responders from across the country were impacted as they were dispatched to help in the response and recovery. Ms. Patrick noted that, while all states have the ability to service mobile voters in the case of emergency through the procedures established through the federal MOVE Act for UOCAVA voters, these procedures were not made available to emergency responders in many states under state law. In response to the experience of voters impacted directly by Hurricane Sandy or indirectly as first responders, the Presidential Commission on Election Administration made the following recommendation:

[T]he experience with Hurricane Sandy made it evident that states must be certain their laws are updated to establish clear procedures for the rescheduling or conduct of elections in the event of a natural disaster. They must also be updated to accommodate voting for first responders from outside the disaster areas and those who are unable to return to their jurisdiction for Election Day due to the emergency.

With respect to accommodating first responders, Ms. Patrick reported that this can be done by either modifying existing federal law or modifying state statutes to expand the definition of those qualified to use the federal MOVE Act's UOCAVA voting procedures in the case of an in-state or out-of-state emergency. Ms. Patrick also identified possible additional legislative considerations for elections emergency authority, including allowing for the authority to consolidate polling locations.

Ms. Patrick next reviewed the need for comprehensive contingency and recovery plans relating to elections. Ms. Patrick identified resources for the Task Force to review including the National Association of Secretaries of State report, the free online training provided by the Federal Emergency Managing Agency, Congressional Research Reports, and the Election Assistance Commission's "Quick Start Guide" to contingency and disaster planning. These resources contain information, guides, and recommended approaches to elections emergency planning.

One approach recommended by Ms. Patrick was to identify all possible contingencies and their corresponding change factors, and then plan the needed responses to those change factors. For example, an example of a contingency would be a snow storm and a resulting change factor from that snow storm would be the reduction in polling place staff. By focusing on the response to the various change factors or impacts, a state or county would have a plan that would address the shortage of poll workers regardless of the reason for the shortage.

Finally, Ms. Patrick identified multiple electronic tools that could be used in the administration of an election. Ms. Patrick noted that these tools would be useful in the case of an emergency or during the normal operation of polling places on election day. While these tools can help mitigate lines and provide for more efficient election administration, Ms. Patrick identified some potential drawbacks as well as including the reliance on electricity or internet connectivity.

#### **D. Meeting Four – October 20, 2015**

In the fourth meeting, the Task Force began the discussion of possible recommendations regarding emergency procedures and emergency powers at both the state and local level. To facilitate this discussion, Secretary Simon provided a document outlining potential options for the Task Force to consider and additional questions to consider for each option. This document was meant to be a guide for facilitating discussion but not a comprehensive list of all options or all questions that would need to be or could be addressed by the Task Force.

Options considered for the development of emergency plans included:

1. **Recommendation Only:** Taskforce recommendation, but no mandate, that OSS and local jurisdictions create an emergency plan.
2. **Legislation with No Specific Requirements:** Legislation requiring the OSS and local officials to create an emergency plan, without any specific requirements for the plans.
3. **Legislation with Specific Plan Requirements:** Legislation requiring that the OSS create a state emergency plan and local officials to create local emergency plans, including specific requirements for what must be addressed in the plans.
4. **Legislation, Specific Requirements, and Presumptive Default Plan:** Legislation requiring that the OSS and local officials create an emergency plan with specific requirements, but also require the OSS to create a model default plan if a local jurisdiction did not create a plan.

With respect to emergency election procedures, the options considered by the Task Force included:

1. **No changes to state law.** This would require the state to operate under current election procedures regardless of the emergency.
2. **Taskforce Recommends Specific Legislative Reforms to Be Used Only in Emergency Situations.** Possible options include:
  - a. Postponement of Election Day.
  - b. Extension of absentee ballot acceptance deadlines.
  - c. Allow alternative methods for absentee ballot acceptance (e.g., via fax/email).
  - d. Allow out-of-jurisdiction voting (e.g., state write-in-ballot).
  - e. Allow consolidation of polling locations.
  - f. Allow expansion of voters eligible for UOCAVA voting procedures.

- g. Allow for the increase in polling place hours.
- 3. **Taskforce Recommends the Legislature Give the OSS Rulemaking Authority to Create Special Emergency Procedures.** This would allow the OSS to use the rulemaking process to create special emergency-only procedures for voting and election administration.

The Task Force discussed these options but did not vote on any recommendations at this meeting.

### **E. Meetings Five and Six—November 17 and December 15, 2015**

The final meetings of the Elections Emergency Planning Task Force were dedicated solely to discussion and recommendations. The Task Force worked to reach a consensus on all recommendations. Ultimately, the Task Force voted to recommend with draft legislation: (1) a requirement for state and local emergency plans; and (2) additional authority for local jurisdictions to address emergencies. With respect to state authority, the Task Force recommended that there be additional state authority but did not develop recommended draft legislation. While these votes were not unanimous, the recommendations represent the outcomes favored by nearly all of the Task Force members.

## **III. Task Force Recommendations Regarding the Creation of Elections Emergency Plans**

The Elections Emergency Planning Task Force divided its discussion on recommendations into a discussion first on recommendations around the need for state and local emergency plans. With respect to elections emergency plans, the Task Force recommends that the legislature require that the state and counties create an elections emergency plan. The Task Force has provided a draft of legislative language to implement these recommendations.

### **A. The Office of the Secretary of State should be required to create a state elections emergency plan**

The Task Force recommends that the legislature require the Office of the Secretary of State to create a state elections emergency plan. Currently, the state has no emergency plan specifically addressing a potential emergency impacting an election. In developing the plan, the Task Force recommends that the legislature require the Secretary of State to consult with Minnesota’s Department of Public Safety, Division of Homeland Security and Emergency Management.

In addition to the development of the state plan, the Task Force recommends that the legislature require the Secretary of State to coordinate with the Governor in the development of the State’s Continuity of Operations and Continuity of Government plans. Currently, the Secretary of State, as a separately elected constitutional officer, is exempt from the Governor’s Executive Order requiring state agencies to participate in Minnesota’s

emergency planning. The Task Force recommends that the Secretary of State's Office be required to participate in this process.

Finally, the Task Force recommends that the legislature require the Secretary of State to develop a model emergency plan and a guide for counties and local jurisdictions to assist in the development of local elections emergency plans. A guide and a model plan will assist counties in the development of their own elections emergency plan and will reduce the burden to counties and local jurisdictions in implementing the Task Force recommendations.

### **B. Each County should create a local elections emergency plan for use in all elections within the County**

The Task Force further recommends that each county should be required to create a local elections emergency plan for use in all elections within the county. The Task Force considered whether to require counties to create an elections emergency plan or instead to simply recommend that counties create an elections emergency plan. After consideration and input from both a multi-county representative and individual election administrators, the Task Force concluded that the recommendation to require counties to create a plan would serve to ensure uniformity of voting experiences in the state.

Under Minnesota Statutes Chapter 12, each political subdivision has a local organization for emergency management. This local emergency management organization is charged with the development of the political subdivision's overall emergency planning needs. In order to ensure that any elections emergency planning needs are coordinated with the political subdivision's emergency plan, the Task Force recommends that the county election officials work with the political subdivision's local organization for emergency management in the development of the county elections emergency plan.

Because the county elections emergency plan applies to all elections within the county, the Task Force recommends that counties be required to consult with the cities, towns, and school districts within the county in the development of the plan. This recommendation ensures that the needs and concerns of school districts and municipalities are considered without requiring each city, town, and school district to create an emergency plan. The Task Force considered requiring each city, town, and school district to create its own emergency plan, but concluded that a county plan could serve the needs of the cities, towns, and school districts within the county so long as it is developed in consultation with the jurisdictions within the county borders. In order to ensure the consistency of voter experience within a political subdivision, the Task Force further recommends that a county be required to coordinate with a neighboring county if a jurisdiction crosses county lines.

Finally, the Task Force considered whether to identify specific scenarios and criteria that the county emergency election plan must address. In order to provide local control at the county level and because the counties would be required to work with their local

emergency management organization, the Task Force limited its recommendation to three specific needs that must be addressed throughout the plan. These needs include:

- The needs of voters with disabilities;
- Ballot security needs; and
- Specific procedures for the process of polling place relocation in the case of an emergency.

Requiring that these needs be addressed in the plan ensures that all voters are considered within all aspects of the emergency planning, that ballot security and integrity is considered, and that there is a clear process in place for any polling place relocation.

### **C. Cities, Towns, and School Districts should be permitted to create their own elections emergency plan**

The Task Force recommends that city, town, or school districts maintain the authority to create their own emergency plans if those plans meet the same requirements as a county elections emergency plan. If that plan meets the same requirements as a county plan (consultation with the local emergency manager, consideration of voters with disabilities, consideration of ballot security, plans for polling place relocation, etc.), the Task Force recommends that the elections emergency plan for that city, town, or school district should control the emergency procedures within that jurisdiction.

### **D. Counties and those local jurisdictions that create an emergency plan must file the plan with the Office of the Secretary of State**

The Task Force recommends that the counties and local jurisdictions creating an emergency plan must file the plans with the Office of the Secretary of State. This recommendation is only a recommendation that the plans be filed with the Office of the Secretary of State, and is not a recommendation that the Office of the Secretary of State have any authority to reject, approve, or otherwise edit the emergency plans.

In order to ensure plans are updated with the Secretary of State's Office in advance of the state general election, the Task Force recommends that the emergency plans be filed by July 1 of each state general election year.

Finally, because the emergency plans could contain security data from the county or local jurisdiction, the Task Force recommends that the plans maintain the same data classification as assigned by the county or local jurisdiction when filed with the Secretary of State.

### **E. The effective date for legislation should require elections emergency plans no sooner than September 1, 2016**

The Task Force considered carefully the effective date of any legislation requiring a county to develop an elections emergency plan. The Task Force considered both the desire to have an emergency plan in place for the 2016 election and the capacity of counties to develop the emergency plans. In light of this, the Task Force recommends that the effective date for the legislation require the plans no sooner than September 1, 2016.

## **IV. Task Force Recommendations Regarding Elections Emergency Procedures and Authority**

The Elections Emergency Planning Task Force recommends that local election officials receive expanded authority to relocate and consolidate polling locations in response to an emergency, and that local election officials have authority to expand polling place hours in limited circumstances. The Task Force has provided recommended legislative language to implement these recommendations related to local election official authority. The Task Force also recommends expanded authority at the state level to address emergencies impacting elections. Though the Task Force recommends the legislature authorize the expansion of state authority, the Task Force has not provided legislative language and instead only provides this narrative recommendation.

### **A. Local election officials should have expanded authority to relocate or consolidate polling locations in cases of an emergency**

The Elections Emergency Planning Task Force recommends that the legislature authorize additional authority for local election officials in cases of emergency. Specifically, the Task Force recommends that local election officials have the authority in cases of emergency to: (1) consolidate polling locations; and (2) relocate polling locations in advance of an election and with flexibility in the location of the polling place. These recommendations are an expansion of the existing authority under state law that election officials are allowed to use at their discretion in cases of emergency. See Minn. Stat. § 204B.23 (2014) (allowing election judges to replace an election judge on election day) and Minn. Stat. § 204B.16 (2014) (allowing an election judge to move a polling place on election day within a precinct or within a mile of the precinct).

The Task Force discussed the need for the authority to consolidate or move a polling location. Examples of where this authority may be needed included: (1) an emergency that impacts an entire precinct or all usable alternative polling locations within the precinct, requiring relocation outside of the precinct; (2) an emergency that impacts multiple election judges, requiring consolidation to facilitate voting; or (3) an emergency occurring prior to election day making a polling location inaccessible, requiring relocation prior to election day. This additional authority would allow election officials to respond to an emergency and resume normal voting procedures quickly.

The Task Force considered whether a local declaration of an emergency should be required in order to use this expanded authority, but determined that local election officials should have this authority independently. The Task Force also considered whether the election officials should petition the courts for this authority in the case of an emergency, but again the Task Force determined that local officials should have this authority independently. Providing this authority directly to election officials will allow local election officials to respond rapidly in cases of an emergency, and allow the resumption of voting activity as quickly as possible.

### **B. Local election officials should have the authority to expand polling place hours in very limited circumstances**

The Elections Emergency Planning Task Force recommends that the legislature authorize local election officials to extend polling place hours in very limited circumstances. In considering this recommendation, the Task Force expressed a preference that the extension of polling place hours be only used if there were no other way to provide access to voters in response to an emergency. The Task Force recommends that this authority only be granted to local election officials if it is accompanied by strong restrictions on its use and there are parameters to ensure that it is applied consistently throughout the state.

### **C. State officials should have expanded authority to address emergencies impacting elections**

The Task Force recommends that additional authority at the state level is needed in order to address emergencies impacting elections at the state or regional level. Unlike the additional authority granted to local election officials, the Task Force recommends that this state-level authority only be authorized for use when it is accompanied by a declaration of an emergency. Minnesota Statutes Chapter 12 vests most emergency authority in the hands of the Governor, but in light of the potential for the Governor to be on the ballot during an emergency and because of the sensitive nature of elections, the Task Force recommends that the power to declare an emergency authorizing emergency elections procedures be held jointly by the Governor and another state official or officials.

In considering who in addition to the Governor would be required to declare an election-related emergency, the Task Force considered: (1) the Executive Council; (2) the Minnesota Supreme Court or Chief Justice of the Minnesota Supreme Court; and (3) the Majority and Minority leaders in the Minnesota House and Senate. After discussion and consideration, the Task Force is not making a recommendation as to who else in conjunction with the Governor is needed to declare an emergency, but instead recommends that the legislature require some additional official(s) to authorize the state election emergency powers in addition to the Governor.

The Task Force recommends that the additional election emergency procedures that the Governor and the additional state official or officials should have the authority to authorize



are as follows:

- Postponement of Election Day;
- Extension of absentee ballot deadlines;
- Alternative methods for absentee ballot acceptance;
- Expansion of UOCAVA voting procedures; and
- A statewide increase in polling place hours.

## **V. Task Force Recommended Legislation**

