

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: February 10, 2020

To: Veterans and Legal Affairs Committee

From: Janet Stocco, Legislative Analyst

LD 102 **An Act To Extend the Time Frame for Processing Absentee Ballots** (*Rep. Moriarity*)

LD 112 **An Act To Facilitate the Timely and Accurate Counting of Absentee Ballots By Extending the Processing Period** (*Rep. Roberts*)

SUMMARY OF BILLS AND PROPOSED AMENDMENT

LD 102 and LD 112 are identical. They propose to extend by three the number of days prior to election day during which municipalities may process absentee ballots. Under current law, the municipal clerk may process ballots “beginning on the **4th day** immediately prior to election day”; under the bills, the processing may begin “on the **7th day** immediately prior to election day.”

The Secretary of State proposed to amend either/both bills to change the deadline by which municipal clerks must send a notice of the municipality’s intent to process absentee ballots prior to election day. Under current law, this notice must be sent by mail, fax or e-mail to the Secretary of State and mailed to the municipal chair of each political party **at least 60 days before election day**. Under the proposed amendment, the notice must be sent (using the same methods) **at least 30 days before election day**.

The following table compares the **statutory provisions** governing early processing of absentee ballots under current law and the bills (as amended). All citations below are to Title 21-A.

Topic & Cite	Current Law	LDs 102 & 112 as amended
Notice §760-B(2)	Notice of the days and times must be sent ≥60 days before the election to: <ul style="list-style-type: none"> Secretary of State Chair of each political party in the municipality. And posted in a conspicuous place in the voting district with the notice of election ≥ 7 days before the election	Notice of the days and times must be sent ≥ 30 days before the election to: <ul style="list-style-type: none"> Secretary of State Chair of each political party in the municipality And posted in a conspicuous place in the voting district with the notice of election ≥ 7 days before the election
Times allowed §760-B, 1st ¶ & sub-§1	From 9:00 a.m. or 9:00 p.m. beginning the 4th day before election day— <i>i.e.</i> , the Friday before election day.	From 9:00 a.m. or 9:00 p.m. beginning the 7th day before election day— <i>i.e.</i> , the Tuesday before election day.
Public Inspection §760-B(3)	Members of public may make a written request to inspect—(1) return envelopes and (2) absentee ballot applications—by 9:00 a.m. on each day they are processed.	

Topic & Cite	Current Law	LDs 102 & 112 as amended
		The clerk must allow inspection of the absentee ballots applications and return envelopes for one hour before the starting time of ballot processing.
Handling full ballot boxes; Pollwatching; Challenges §760-B(4)	Procedures for handling full ballot boxes, ¹ pollwatching, and challenging ballots must be “conducted in the same manner as election day or as close as practicable.” Pollwatching: Under §627(4) , there must be sufficient space for at least one worker from each political party to remain outside the guardrail as a pollwatcher. Challenges: Under §673(1) , a ballot may be challenged by an election official or another voter on the grounds that the voter: <ul style="list-style-type: none"> ○ Is not enrolled in the proper party for a primary election; ○ Is unqualified to vote by age, citizenship or residency; ○ Registered to vote in the 20-days before an election or on election but did not provide satisfactory proof of identity (this challenge may only be made by an election official); ○ Voted absentee but did not properly apply for an absentee ballot; ○ Voted absentee but did not properly complete the affidavit on the return envelope or failed to cast the ballot or complete the affidavit before a required witness—witnesses are required when the voter receives assistance in reading or marking the ballot; ○ Improperly communicated with someone while marking the ballot; ○ Did not return the ballot to the clerk by the close of the polls; ○ Voted using the name of another; ○ Committed any violation of Title 21-A, governing elections; or ○ Voted using the wrong electoral district ballot or wrong party ballot. 	
Rejection of absentee ballot §759(1-3)		The election official may not open the return envelope and must “reject” it if the signatures on the return envelope and absentee ballot application do not match, the affidavit is not completed properly, the person is not registered or, in a primary, if the voter is not enrolled in a party or the color of the ballot is not the color for the party in which the voter is enrolled. Note: although §756(2) requires the clerk to check signatures & affidavits and note any discrepancies when the ballot is received, §759(1-3) suggests that rejection of ballots occurs during processing.
Ballot counting and election results §760-B(5)		Counting of ballots, determinations of voter intent and release of election results may not occur until after the polls have closed on election day. If a high-speed tabulator is used, the results of absentee ballot scanning may not be viewed until after the polls close on election day.
Security requirements §760-B(6)		At the end of each early absentee ballot processing session, the processed absentee ballots must be locked and sealed in the ballot box, tabulating equipment ballot box or tamper-proof container and stored in a vault or other locked secure location.

¹ There do not appear to be any statutes specifying the procedure for handling full ballot boxes on election day.

ADDITIONAL INFORMATION

- **November 2020 General Election.** On August 26, 2020, Governor Mills issued an Executive Order pertaining to the November 3, 2020 General Election that provided, in pertinent part, as follows:

The limitation on processing absentee ballots up to four days prior to election day under 21-A M.R.S. § 760-B(1) is suspended and modified to permit such processing up to seven days prior to election. The 60 days' notice to be given by a municipality of its intent to process absentee ballots prior to election day pursuant to 21-A M.R.S. §760-B(2) is suspended and modified to 30 days' notice.

[Me. Exec. Order No.8 FY 20/21, §I\(F\)\(1\) \(Aug. 26, 2020\).](#)

- **Guidelines and Info. on early processing of absentee ballots.** In response to requests for more information, the Office of the Secretary of State provided several documents describing the procedures municipal clerks follow during early processing of absentee ballots as well as a list of the municipalities that engaged in early processing of absentee ballots in the November 2020 election, and on which days, as well as data on the number of ballots processed and staff involved for a few of those municipalities. This information is posted [on the VLA Committee webpage for LD 102 and LD 112](#) in a single, scanned PDF.

Document Title	Page of PDF
Email from Deputy Secretary of State Julie Flynn (2/1/21 at 9:38 a.m.)	1
Fact Sheet on Early Processing of Ballots for 11/30/20 General Election	2-3
Municipalities Processing Absentee Ballots Prior to Election Day (Nov. 3, 2020 General Election) - spreadsheet of municipalities, processing days and locations	4-9
Uniform Guidelines for Securing Ballots and Other Materials for Early Processing of Absentee Ballots Prior to Election Day: Hand-count Municipalities Rev. Sept. 2020	10-11
○ Log of Early Processed Absentee Ballots (Hand-count Municipalities)	12
Uniform Guidelines for Securing Ballots and Other Materials for Early Processing of Absentee Ballots Prior to Election Day: DS200 Municipalities Rev. Oct. 2020	13-16
○ Log of Early Processed Absentee Ballots (Tabulator Ballots)	17
○ DS200 Early Absentee Processing Checklist	18-20
Spreadsheet showing data on early processing of absentee ballots by Lewiston, Bangor, Portland, West Bath, Waterville and Raymond in Nov. 2020 election	21

TECHNICAL ISSUES

1. There is a small typographical error in the proposed amendment as it is printed in Rep. Roberts' testimony. Please instead review the language of her amendment that is posted online at the following link: <http://legislature.maine.gov/ld-112>.

FISCAL IMPACT

Not yet determined.