OFFICE OF POLICY AND LEGAL ANALYSIS

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To: Veterans and Legal Affairs Committee

From: Janet Stocco, Legislative Analyst

LD 208 An Act To Expand Access to Absentee Ballots (Representative Brooks)

LD 1164 An Act To Expand the Application Period for Absentee Ballot Requests and Allow

Early Processing of Absentee Ballots (*Representative Bailey*)

SUMMARY

LD 208 and LD 1164:

- 1. <u>Authorize no-excuse absentee voting through election day</u>. Section 3 of both LD 208 and LD 1164 repeals 21-A M.R.S. §753-B(2)(D) (attached), which prohibits a municipal clerk from issuing an absentee ballot in response to an application received after the third business day before an election—*i.e.*, after Thursday of the week before the election—unless the voter signed the application and stated that the voter (1) will be unexpectedly absent from the municipality during the entire time the polls are open; (2) has a physical disability; (3) is a resident of a coastal island and is unable to travel to the polls; or (4) has an incapacity or illness preventing the voter from leaving home or a treatment facility. This provision of current law applies equally to voters who:
 - Vote by absentee ballot outside the presence of the clerk—*i.e.*, by having the absentee ballot issued in person at the clerk's office, issued by mail, or delivered by an immediate family member or a third person; voting; and returning the voted ballot to the municipal clerk; and
 - Vote by absentee ballot in the presence of the municipal clerk.

LD 208 only:

- 2. Authorize third persons to return absentee ballots through the close of polls on election day. Current law, §753-B(3) (attached), requires a third person to whom an absentee ballot was issued to return that absentee ballot to the clerk's office within 2 business days of the date the third person received the ballot or by the close of polls on election day, whichever is earlier, unless good cause is shown. In addition, the third person's failure to return an absentee ballot to the municipal clerk by the close of the polls on election day constitutes a class E crime under §791(1)(C) (attached).
 - Section 4 of LD 208 eliminates the 2-business-days deadline in §753-B(3) for a third person to return an absentee ballot but retains the requirement that the third person return the absentee ballot by the close of polls on election day.
- 3. <u>Clarify in-person absentee voting is permitted through 8:00 p.m. on election day</u>. Under §753-B(8) of current law, a voter may vote by absentee ballot in the presence of the municipal clerk without completing an absentee ballot application. Section 5 of LD 208 would clarify that a voter may vote by absentee ballot in the presence of the municipal clerk until 8:00 p.m. on election day.

LD 1164 only:

2. <u>Early processing of absentee ballots</u>. Section 4 of LD 1164 would amend §760-B to authorize municipal officials to process absentee ballots beginning the 7th day (Tue.) before election day rather than the 4th day (Fri.) before election day. An identical proposal was enacted in the First Regular Session of the 130th Legislature through Public Law 2021, ch. 11 (effective June 29, 2201).

ADDITIONAL INFORMATION

- 1. Additional requirements related to third person delivery or return of absentee ballots. Under current law, not amended in either bill, a voter may submit a signed, written application for an absentee ballot designating a third person—i.e., a person who is neither the voter nor the voter's immediate family member—to deliver the ballot to the voter, to return the ballot to the municipal clerk, or both. 21-A M.R.S. §753-A(3)(C). By contrast, a voter who requests an absentee ballot by telephone or the Internet may not designate a third person to deliver or to return the voter's absentee ballot. §753-A(4) & (6); §753-B(2)(B). A voter whose absentee ballot is delivered or returned by a third person must mark the absentee ballot in the presence of a notary public, municipal clerk, clerk of court or 2 other witnesses, who must sign the witness certification on the return envelope. §754-A(2). The third person must return the absentee ballot to the municipal clerk in person or through the mail and may not use a secured drop box. §754-A(2).
- 2. **Deadline for in-person absentee voting in the presence of the clerk.** §753-B(8) of current law does not specify a deadline for in-person absentee voting in the presence of the municipal clerk. But §753-B(2)(D), which prohibits "no excuse" absentee voting after the third business day before an election (*i.e.*, after Thursday), applies to in-person absentee voting under current law. Accordingly, in-person absentee voting is permitted under current law through Monday, the day before the election, but generally not on Election Day, when it would be difficult for a voter present in the town office to swear to one of the reasons in §753-B(2)(D) for being unable to travel to the polling place.
- 3. "No excuse" absentee voting during 2020 elections. In 2020, the Governor issued two Executive Orders altering the requirements for absentee voting in the primary election (which was moved to July) and in the general election due to the public health emergency caused by COVID-19:

	Executive Order	In-person absentee voting	"Traditional" absentee voting
Primary	39 FY 19/20,	Change: excuse not required through the day of the election.	
election	§I(C)(1)		
General	8 FY 20-21,	Change: excuse not required on	No change: excuse required
election	§I(F)(3)	Friday before election	beginning Friday before election

ISSUES RAISED AND AMENDMENTS PROPOSED AT PUBLIC HEARING

- 1. **LD 1164 sponsor proposed amendment**. The sponsor of LD 1164 requested that the committee strike Section 4 of the bill, because this change was enacted in Public Law 2021, ch. 11.
- 2. **LD 208 sponsor proposed amendment**: The sponsor of LD 208 proposed amending the bill to retain the requirement that a voter provide one of the 4 existing statutory reasons for requesting an absentee ballot on the day before the election (Monday) or on Election Day, but to permit no-excuse absentee voting if the absentee ballot application is received on the Friday before the election. The League of Women Voters also proposed amending either LD 208 or LD 1164 in this manner.

- 3. **LD 208 or 1164 League of Women Voters proposed amendment.** In addition to proposing that an absentee voter be required to provide a reason to vote by absentee ballot on the Monday before the election (see above), the League proposed that municipalities be permitted to offer in-person absentee voting on the weekend before the election, but not the Monday before or on election day.
- 4. **Municipal concerns**. The Maine Town & City Clerks' Association, the Maine Municipal Association and multiple individual municipal clerks raised concerns regarding:
 - a. Repealing the requirement that voters provide one of 4 enumerated "excuses" for requesting an absentee ballot if the application is submitted on the Friday or Monday preceding an election. Municipal officials testified that this deadline, which was enacted in 2011 through P.L. 2011, ch. 399, was established to relieve the administrative burden caused by the large number of absentee voters who historically cast their ballots in person on the Friday and Monday preceding the election, the "last days" of absentee voting. During these days, municipal clerks report that they are busy completing their final preparations for election day—including physically arranging the polling place, testing voting equipment, and both updating voter registration information in the central voter registration system and conducting early processing of absentee ballots to ensure an accurate incoming voting list.
 - b. Repealing the 2-business-day deadline after receipt of an absentee ballot for third parties to return the voted absentee ballot to the municipal clerk. Municipal officials expressed concern that allowing third parties to retain absentee ballots for a longer period of time may decrease ballot security and election integrity by increasing the possibility that a third party will lose or misplace absentee ballots and by decreasing the time available for a voter to cure defects with the signature or affidavits on the absentee ballot return envelope.
 - c. Allowing voters to engage in in-person absentee voting on election day. Municipal officials expressed concern that this portion of the bill may require municipalities that would otherwise close their municipal offices on election day to keep those offices open until 8:00 p.m., longer than the ordinary business day, for voters to vote by absentee ballot in the presence of the municipal clerk. This will render the municipal clerk unable to provide assistance at the polling place, requiring the hiring of additional elections staff. Alternatively, if the municipal office also serves as the polling place, the bill would require municipal clerks simultaneously to administer both in-person absentee voting and traditional in-person (non-absentee) voting at the same physical location. In either scenario, it will be difficult logistically for municipal clerks to prevent a voter from casting both an in-person absentee ballot and a traditional in-person ballot during the election.
- 5. Secretary of State concerns and proposed amendment (?). The Secretary of State agreed with municipal officials' concerns regarding in-person absentee voting in the presence of the municipal clerk on election day. In addition, the Secretary testified that the deadline for requesting a mailed absentee ballot should be the close of business on Thursday before election day, to ensure sufficient time for the mailed ballot to reach the absentee voter prior to election day.

Analyst note: Although current law establishes the close of business on the Thursday before election day as the deadline for a voter to submit a no-excuse absentee ballot application, current law does not establish a deadline for a voter to request that an absentee ballot be mailed to the voter by the municipal clerk. *See* 21-A M.R.S. §753-B (*attached*).

REQUESTS FOR INFORMATION

1. **Request to Secretary of State**: Information on the process under current §753-B(2)(D) to apply for an absentee ballot after the third business day before an election. *See attached special circumstances application and instructions that were in use during the special election on March 9, 2021.*

TECHNICAL ISSUES

1. Conflicts with LD 1363 and LD 1575:

- Unlike LD 208 and LD 1164, LD 1575 would retain §753-B(2)(D)'s requirement for absentee voters to provide one of the four statutory reasons for voting by absentee ballot if their request is received on the final business day before an election. In addition, LD 1575 would require the Secretary of State to develop uniform instructional language regarding the requirement to provide a reason to vote by absentee ballot on the day before the election, which a municipality must display in the municipal office and on any website or social media used by the municipality to communicate election information.
- LD 208 would amend §753-B(8) to clarify that voters may vote by absentee ballot in the presence of the clerk until 8:00 p.m. on Election Day. By contrast,
 - Section 21 of LD 1363 does not specify a deadline for in-person absentee voting but does impose a requirement that the clerk first establish the voter's identity by requesting the voter's residence address and year of birth before issuing the absentee ballot.
 - Section 5 of LD 1575 also does not specify a deadline for in-person absentee voting (except to the extent that it requires an excuse to vote by absentee ballot on the day before and day of the election, thus implicitly prohibiting in-person absentee voting on Election Day) but does require each municipality with more than 500 registered voters to allow in-person absentee voting for at least 3 hours on the Friday before Election Day.
- 2. **Absentee voting request deadlines?** Given the lack of clear guidance in current law regarding the last date on which voters may vote by absentee ballot in the presence of the municipal clerk or request an absentee ballot by mail, the Committee may wish to consider clarifying the deadlines for *receipt of a request*:
 - o To vote by absentee ballot in the presence of the municipal clerk;
 - o To have an absentee ballot issued to a voter who appears in person;
 - o To have an absentee ballot sent to a voter by mail; and
 - o To have an absentee ballot delivered to a voter by an immediate family member or a third person.

FISCAL IMPACT

Not yet determined.

§753-B. Procedure for issuing absentee ballot

- 1. Application or written request received. Upon receipt of an application or written request for an absentee ballot that is accepted pursuant to section 753-A, the clerk shall immediately issue an absentee ballot and return envelope by mail or in person to the applicant or to the immediate family member or to a 3rd person designated in a written application or request made by the voter, except as provided in subsection 2. The clerk shall type or write in ink the name and the residence address of the voter in the designated section of the return envelope.
 - **2. Restrictions on issuing ballot.** The clerk may not issue an absentee ballot:
 - A. To any 3rd person who is a candidate or a member of a candidate's immediate family;
 - B. To an immediate family member or to a 3rd person if the absentee ballot was requested by telephone or by electronic means;
 - C. To a 3rd person who already has been issued 5 absentee ballots for voters in the municipality, until the 3rd person has returned one of those ballots; or
 - D. To any voter, immediate family member or 3rd person whose request was received in the municipal office after the 3rd business day before election day, unless the voter signs an application, designed by the Secretary of State, stating one of the following reasons for requesting an absentee ballot after the deadline:
 - (1) Unexpected absence from the municipality during the entire time the polls are open on election day;
 - (2) Physical disability;
 - (3) Inability to travel to the polls if the voter is a resident of a coastal island ward or precinct; or
 - (4) An incapacity or illness that has resulted in the voter's being unable to leave home or a treatment facility.
- **3. Return of ballot by 3rd person.** A 3rd person shall, unless good cause is shown, return an absentee ballot to the clerk's office within 2 business days of the date that ballot was provided to the 3rd person or by the close of the polls on election day, whichever is earlier. The clerk shall inform the 3rd person of the deadline for the return of the ballot.
- **4. Duplicate ballot.** The clerk may issue a duplicate state absentee ballot to an applicant if the initially issued ballot has not already been marked and returned to the clerk, the applicant requests one by an acceptable method outlined in this subchapter and:
 - A. The applicant states good cause, including, but not limited to, loss of, spoiling of or damage to the first absentee ballot. Good cause does not include an applicant's decision to change the applicant's vote after the applicant has returned the ballot to the clerk; or
 - B. An absentee ballot for the applicant that was furnished to a designated 3rd person was not returned to the clerk's office within the time limit provided in subsection 3. If a ballot for an applicant is not returned to the clerk within that time limit, the clerk shall mail or hand deliver a ballot to that applicant and may not issue another ballot to the applicant except for good cause as provided in this subsection. This paragraph does not affect the deadline for delivery of absentee ballots under section 755.

The clerk may issue a 2nd state absentee ballot to a voter from whom the clerk has received a return envelope apparently containing a state absentee ballot when the State has provided the clerk with replacement ballots to reflect the removal of a candidate's name or the addition of a new candidate's name or the correction of an error or when the absentee ballot envelope has a defect in the affidavit that would cause the ballot to be rejected. When a 2nd state absentee ballot is issued to a voter under this section, the clerk must write the words "second ballot issued" on the return envelope.

5. Alternate method of balloting by residents of certain licensed facilities. The municipal clerk shall designate one time during the 30-day period prior to an election during which the municipal clerk shall be present in each licensed nursing home subject to the provisions of Title 22, chapter 405; licensed level IV residential care facility subject to the provisions of Title 22, chapter 1664; and licensed assisted living program with more than 6 beds subject to the provisions of Title 22, chapter 1664, in the municipality for the purpose of conducting

absentee voting by residents of these facilities. The clerk shall designate which areas in these facilities constitute the voting place, the voting booth and the guardrail enclosure. The clerk shall post a notice in the municipal office that absentee voting will be conducted as prescribed in this subsection. The clerk shall provide a notice to each licensed facility of the date and time when absentee voting will be conducted. The notice must state that the licensed facility is required to notify the contact person or persons, if any, for each resident that absentee voting will be conducted. Each licensed facility must provide notice, which may be in the form of an e-mail or an electronic newsletter, to the contact person or persons, if any, for each resident of the date and time when absentee voting will be conducted at the facility. Sections 681 and 682 apply to voting in these facilities within the areas designated by the clerk. As used in this subsection, "level IV residential care facility" means a residential care facility as defined by Title 22, section 7852, subsection 14 that has a licensed capacity of more than 6 residents.

- **6.** Clerk to keep list of absentee voters. The clerk shall create and maintain, in the central voter registration system, an alphabetical list, by district, of the persons who requested or were furnished absentee ballots, including the persons who voted in the presence of the clerk under subsection 8 and the persons whose ballots were issued to a 3rd person under subsection 1. The clerk shall maintain a copy of the lists required under this subsection for a period of 2 years as a public record.
 - A. The list of absentee voters must include each voter's name, residence address, voting district and party affiliation; the date and manner by which the ballot was requested, issued and received; and a notation of whether the application and the ballot were accepted or rejected. The clerk must also indicate on the list when the absentee voter is a uniformed service voter, overseas voter or township voter. By the time that all absentee ballots have been processed on election day, the clerk must update the central voter registration system or annotate the printed list of absentee voters to reflect all ballots that were received by the close of the polls on election day, including a notation of whether the ballots were accepted or rejected and the reasons for such rejections. This list, reflecting all absentee ballots received by the close of the polls, must be made available for public inspection. Any absentee voter certified as a participant in the Address Confidentiality Program pursuant to Title 5, section 90-B must be listed by the voter code assigned to that individual under the program instead of by the voter's name and reflect the Address Confidentiality Program address assigned to the voter. The list of absentee voters must be sorted so that the program participants appear at the end of the list and must be printed on a separate page of the list. The portion of the list of absentee voters relating to Address Confidentiality Program participants must be kept under seal and excluded from public inspection.
 - B. The clerk creates the list of absentee voters as required in paragraph A by marking the records of registered voters in the central voter registration system. The clerk must sign and date each official printed copy of the list of absentee voters that is created for public inspection, certifying that the list is a true and accurate list of absentee voters for the applicable election. No additional certification is required by the registrar of voters.
 - C. The clerk shall also keep a list of the 3rd persons designated in applications or written requests to whom absentee ballots are sent or delivered under subsection 1 and of the number of absentee ballots sent or delivered to them. This list of 3rd person ballot carriers must include telephone numbers for contacting the 3rd persons.

D.

- E. Within 5 business days after each election, the clerk shall update the central voter registration system to include the changes required by paragraph A. The clerk also must update the central voter registration system to reflect any absentee ballots received after the polls have closed on election day by changing the rejection reason. When all updates have been made in the central voter registration system, the clerk shall certify this to the Secretary of State and make a final list of absentee ballots available for public inspection.
- **7. Registration verified.** If the applicant is registered and enrolled when necessary, the ballot must be sent to the applicant. If the applicant has registered and enrolled when necessary under section 155 and will attain 18 years of age on or before the date of the election, the registrar or clerk shall so certify on the application. If not, the registrar or clerk shall write "not registered" or "not enrolled" on the face of the application and sign the

registrar's or clerk's name. Whenever an application for an absentee ballot is denied, the municipal clerk shall immediately notify the applicant in writing of the reason for the denial.

8. Absentee voting in presence of clerk. A person who wishes to vote by absentee ballot may, without completing an application, vote by absentee ballot in the presence of the clerk, except as provided in subsection 2. The method of voting is otherwise as prescribed in this article. After the person has voted, the clerk shall sign the affidavit on the return envelope as a witness, indicate on the envelope that the voter voted in the presence of a clerk and ensure that the affidavit on the return envelope is properly completed by the voter. For the 45 days preceding an election, during the hours when the clerk's office is open and may be conducting absentee voting, the display or distribution of any advertising material intended to influence a voter's decision regarding a candidate or question on the ballot for that election is prohibited within the clerk's office and on public property within 250 feet of the entrance to the building in which the clerk's office is located.

This subsection does not apply to the display or distribution of any campaign advertising material on private property that is within 250 feet of the entrance to the building in which the clerk's office is located. For purposes of this section, "private property" includes privately owned property subject to a public right-of-way that is an easement right-of-way.

This subsection does not apply to campaign advertising material on automobiles traveling to and from the municipal office or parked on municipal property while the occupants are visiting the municipal office to conduct municipal business. It does not prohibit a person who is at the municipal office for the purpose of conducting municipal business or for absentee voting from wearing a campaign button when the longest dimension of the button does not exceed 3 inches.

9. Restrictions on absentee voting in presence of clerk. Except as allowed by subsection 5, a municipal clerk may not remove absentee ballots from the municipal office for the purpose of conducting absentee voting in the presence of the clerk except upon receipt of an application or written request from the voter. The clerk may not be assisted in delivering or providing an absentee ballot by any person who is a candidate or a member of a candidate's immediate family. Assistance includes, but is not limited to, providing transportation to a clerk who is delivering absentee ballots to a voter who is not marking the absentee ballot in the municipal clerk's office.

§755. Deadline

In order to be valid, an absentee ballot must be delivered to the municipal clerk at any time before the polls are closed.

§791. Violations and penalties

1. Class E crime. The commission of any act described as follows in this subsection is a Class E crime:

. . .

C. A 3rd person, designated in an application or request for an absentee ballot, who receives an absentee ballot from the clerk in accordance with that application or request, and who, without good cause, fails to return that absentee ballot to the clerk's office within the time limit provided in section 755.



March 9, 2021 Special Election Special Circumstances Application for Absentee Ballot (Required after March 4, 2021)

Application Received (Date/Time)

Ballot Sent/Delivered (Date/Time)

This application must be completed if the voter's request is received by the clerk after Thursday, March 4, 2021. The voter must meet one of the special circumstances allowed by law and indicate the reason on this application. The voter must complete and sign this application before a ballot will be issued. **Exception:** A voter who votes in the clerk's presence on March 5, 2021 does not need to complete this application.

1. Full Name of Registered Voter	r Requesting the Ballot	
2. Residence Address of Voter _	(Street Address)	(Municipality)
3. Voter's Date of Birth /_		ne Number
5. Method of Delivery of Ballot to	the Voter	
☐ Issued to Voter		
☐ By Mail to this Address _		
☐ By Immediate Family Me	mber of Voter	
Designated Here	(Name)	
		(Relationship to Voter)
☐ By this 3 rd Person (Designate	d by the Voter)(Name)	(Telephone #)
6. Voter must check the applicabl	e box below indicating the reason for t	this after deadline request:
☐ I will be absent from my municipa	ality of residence <u>unexpectedly</u> during the	e entire time the polls are open on election day
☐ I have a physical disability;		
☐ I am unable to leave my home or	treatment facility due to an incapacity or i	llness; or
☐ I am a resident of a coastal island	ward or precinct and am unable to travel t	to the polls.
I certify, under penalty of law, the	hat the information provided on this	application is true.
7. Signature of Voter		Date
8. If ballot is returned by an Imme	ediate Family Member, the family men	nber must sign and indicate relationship.
•		ationship to Voter
AIDE CERTIFICAT	E (Must be Completed if Applicant	t was Assisted as Designated Below)
If the voter received assistance in complete and sign this certificate.	reading and/or signing this application	, the person who assisted the voter must
I helped this voter: 🔲 read th	e application 🗖 sign the applicati	on \square read and sign the application
Signature of Aide	Printed Name of Ai	ide

Special Circumstances Application for Absentee Ballot (Required after 3/4/2021) Instructions for Election Officials Prepared by the Division of Elections – February 2021

Absentee Ballot Request (ABR) service: The ABR service, which voters use to request an absentee ballot by electronic means, has been programmed to <u>shut down</u> at 5 p.m. Thursday, March 4, 2021. Municipal Clerks must access the ABR site after 5 p.m. on March 4th or on Friday, March 5th to check for <u>pending requests</u>. Any pending requests must be accepted (as long as the voter is otherwise eligible to receive an absentee ballot).

Pursuant to EO 8 FY 20/21, the Municipal Clerk's office must be open to allow in person absentee voting until 5 p.m. on Friday, March 5th. In EO 8, the Governor extended the deadline for voters to request (and vote) an in-person absentee ballot without a reason, until 5 pm on the second business day before the election, or Friday, March 5th. The deadline for all other methods of requesting a "noreason" absentee ballot (e.g. electronic, telephone and written requests) is still 5:00 pm on the third business day prior to election day (Thursday, March 4, 2021).

- Title 21-A §1(4) defines "business day" to mean "any day of the calendar year other than a Saturday, Sunday or legal holiday". Thus, the term business day applies to Friday, March 5th, regardless of whether or not the clerk's office is normally open on Fridays.
- Accordingly, we interpret the executive order to require municipalities to be open and to offer absentee voting in the presence of the clerk until 5 pm on Friday, March 5th. The executive order does not specify a start time; however, since this is the last day for no-reason absentee voting for the general election, we would encourage towns to be open at least 4 hours on that day (i.e., from 1 pm to 5 pm) even if the office is not normally open then.

If a voter requests to vote a ballot in person before 5 p.m. on Friday, March 5th, the voter can do so without completing a special circumstances application.

If a voter requests a ballot that will not be voted in the clerk's presence on March 5th or requests any absentee ballot after March 5th, the voter must complete a Special Circumstances Application.

<u>Special Circumstances Application</u>. Any voter requesting a ballot after the deadline (close of business on March 4, 2021) must complete the Special Circumstances Application and indicate one of the 4 reasons allowed by statute: Title 21-A §753-B, sub-section 2(D):

- Unexpected absence from the municipality during the entire time the polls are open on Election Day; or
- 2) Physical disability; or
- 3) Incapacity or illness that has resulted in the voter's being unable to leave home or a treatment facility; or
- 4) Inability to travel to the polls if the voter is a resident of a coastal island ward or precinct.
- ▶ The application must be signed by the voter. An immediate family member cannot sign the Special Circumstances Application for the voter.
- ▶ The voter must indicate in the application how the ballot is to be issued (i.e. to the voter -- either in person or by mail, to an immediate family member designated by the voter, or to a 3rd person designated by the voter). Witness requirements are the same as for absentee ballots issued prior to the deadline.

By signing the application, the voter is making an unsworn oath that all information in the application is true. Once the application is completed by the voter, the Municipal Clerk must issue the ballot in the manner requested by the voter.

NOTE: The deadline for returning absentee ballots has not changed. You must continue to accept returned ballots until 8 p.m. on Election Day, March 9, 2021.