

**OFFICE OF POLICY AND LEGAL ANALYSIS**

**Date:** February 22, 2021

**To:** Veterans and Legal Affairs Committee

**From:** Janet Stocco, Legislative Analyst

**LD 148      An Act To Establish Ongoing Absentee Voting (*Speaker Fecteau*)**

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**SUMMARY**

LD 148 allows a voter to obtain “ongoing absentee voter” status and automatically receive absentee ballots by mail for each subsequent statewide, municipal or other (ex: county) election until that status is terminated through one of the methods specified in the bill.

**Application procedures for ongoing absentee voter status.** The bill requires the Secretary of State to design procedures for requesting ongoing absentee voter status—*for example*, how requests may be made (in writing, via phone or the internet?) as well as the information that must be included in each request. At a minimum, the bill requires these procedures to include following:

- As is currently allowed with respect to one-time absentee voter applications, allowing a voter who is unable to read, sign or complete the application due to physical disability, illiteracy or religious faith to obtain assistance in doing so from a person other than the voter’s employer or an agent of the voter’s employer or union. *See* [21-A M.R.S. §753-A\(5\)](#).
- Requiring an applicant to provide a telephone number and email address.
- Notifying an applicant that the applicant’s ongoing absentee voter status will be terminated if the applicant moves out of the municipality.

**UOCAVA voters.** Uniformed service voters and overseas voters who are covered by the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) may **not** apply for ongoing absentee voter status under the bill. Under current Maine law, however, a UOCAVA voter’s valid absentee ballot request remains valid for each federal and state election that occurs within 18 months after the request is received. [21-A M.R.S. §780](#).

**Termination of ongoing absentee voter status.** The bill requires the municipal clerk or the Secretary of State to terminate a voter’s ongoing absentee voter status **if and only if**:

- The voter requests termination of the status in writing;
- The voter dies or becomes disqualified;
- An absentee ballot sent to the voter is returned as undeliverable; or
- The voter’s registration is designated as “inactive” or is “cancelled” in the central voter registration (CVR) system. (See explanation under “additional information” below.)

**Process for rectifying errors on all absentee ballot return envelopes.** Sec. 3 of the bill requires that all voters submitting requests for an absentee ballot—not just ongoing absentee voter status requests—

be asked to provide their telephone numbers and email addresses. Sec. 4 of the bill requires that, if a clerk notices any of the following defects on the return envelope—the voter’s signature is missing, the voter’s signature does not match the signature on the absentee ballot application, if any, or the affidavit is improperly completed—the clerk must make a good faith effort to notify the voter within 24 hours by mail, telephone or e-mail of the “procedure by which the voter may cure” the identified defect.

**Effective date:** If enacted, the bill would not take effect until January 1, 2023.

## ADDITIONAL INFORMATION

### ➤ **Inactive/Cancelled voter registrations.**

- Under [21-A M.R.S. §162-A\(1\)-\(2\)](#), a voter’s registration will be designated “inactive” in the central voter registration system (CVR) if the registrar or Secretary of State has reason to believe that the voter has moved and sends “by forwardable mail” a change of address confirmation notice to the voter’s last known place of residence with a postage paid return notice but the voter fails to respond.
- Under [§161\(2-A\)](#) and [§162-A\(2\)](#), a voter’s registration will be canceled in the CVR if either (a) the voter registers to vote in another jurisdiction or (b) the voter fails to vote in 2 general elections after the voter’s registration has been designated “inactive” in the CVR as described above.

### ➤ **Absentee ballot requests under current law** – *see also* Secretary of State’s [Absentee Voting Guide](#)

- **Timing/reason:** A voter may request an absentee ballot without specifying a reason, unless the request is made after the 3rd business day before the election, in which case the voter must sign a statement that the voter: will be unexpectedly absent from the municipality during the entire time the polls will be open; has a physical disability; is unable to travel to the polls and is a resident of a coastal island; or is ill or incapacitated in a way that prevents the voter from leaving home or a treatment facility. 21-A M.R.S.A. [§751](#); [§753-B](#).
- **Method to request an absentee ballot or vote by absentee ballot in presence of clerk:** Under [§753-A](#) & [§753-B](#), a voter may request an absentee ballot or vote absentee in one of the following ways (the voter may be assisted by an aide if the voter cannot sign a request):
  1. **Written request**—stating voter’s name, residence address and, where applicable, different address where the absentee ballot should be sent—*signed by the voter or signed by the voter’s “immediate family” member.*<sup>1</sup>
  2. **Written request**—stating information in #1 above—*signed by the voter* and requesting that the absentee ballot be delivered to the voter or returned by a 3rd person who is not an immediate family member;
  3. **Telephone request**—stating the voter’s name, residence address, *birth date* (used to confirm identity) and, where applicable, a different address where the absentee ballot should be sent. The ballot may not be requested by or issued to a 3<sup>rd</sup> person or immediate family member.

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<sup>1</sup> “Immediate family” is defined in §1(20) as “a person’s spouse, parent, grandparent, child, grandchild, sister, half-sister, brother, half-brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, domestic partner, the half-brother or half-sister of a person’s spouse, or the spouse of a person’s half-brother or half-sister.”

4. **Online request**—a voter may request his or her own absentee ballot through means designed by Secretary of State that must require the clerk to verify the voter’s identity using the voter’s residence address and birth date. The absentee ballot may not be issued to a 3rd person or immediate family member if the request is made online.
  5. **Absentee voting in a nursing home / assisted living facility**—the clerk must visit specified types of licensed nursing homes and assisted living facilities in the municipality to conduct absentee voting for each election.
  6. **In -person absentee voting**—a voter may alternatively vote by absentee ballot in the municipal clerk’s office in the presence of the clerk.
- **Past Pilot Project:** [Resolve 2009, Ch. 94](#) required the Secretary of State to conduct a pilot program for ongoing absentee voter status for the 3 statewide elections in Nov. 2009, June 2010 and Nov. 2010. The report from that pilot program is attached to [Secretary of State Bellows’ testimony](#).
- **Other States.** See attached information from NCSL on states with permanent absentee voting for all voters, for voters with permanent disabilities or for voters over age 65 as well as states where absentee ballot *applications* (not ballots) are automatically sent to certain types of registered voters.

## AMENDMENTS PROPOSED & SELECTED ISSUES RAISED AT PUBLIC HEARING

- **Proposed amendment - Secretary of State.** In [her testimony](#), Secretary Bellows proposed substituting the language in section 4 of the bill that requires clerks to notify absentee voters when there is a problem with the signatures or affidavit on an absentee ballot return envelope. The main differences between the Secretary’s proposal and the bill are as follows:
  - In the bill, the clerk must “make a good faith effort” to notify the absentee voter of any discrepancy in the signature on the return envelope, any missing signature on the return envelope, or any improperly completed affidavit “within 24 hours by mail, telephone or e-mail.” In Secretary Bellows’ proposed amendment, the clerk must “hold the envelope aside for a minimum of one business day while attempting to notify the voter.”
  - Secretary Bellows’ proposed amendment also directs the clerk to note on the return envelope the “potential defect” that has been found as well as: an explanation of whether the defect has been cured; and if cured, whether the ballot is accepted or accepted with a challenge or, if not cured, an explanation of why the ballot is rejected.
- **Proposed amendment - League of Women Voters of Maine.** The League recommends that Maine join the Electronic Registration Information Center (ERIC) to help maintain accurate voting rolls and help prevent sending absentee ballots to incorrect addresses. RepresentUs also testified in favor of ERIC membership. According to the [ERIC website](#), 30 states and the District of Columbia are currently members. States that join ERIC are required under the [ERIC Membership Agreement](#) to engage in the following activities or their membership will be terminated:
  - Pay a \$25,000 initial fee to join ERIC and pay annual dues (at a rate approved by the members)
  - Submit non-confidential voter registration data and motor vehicle licensing / photo identification data for U.S. citizens—including name, address, last 4 digits of the social security number, date of birth—to ERIC “at least every sixty (60) days.”

*Note:* ERIC compares the data received from each Member state to data from other member states as well as to the Social Security Administration’s master death index list.

- Member states are encouraged to request the following data from ERIC each calendar year, but the data will be sent at least every 425 days even if no request is made by the Member state:
  - *Persons eligible or possibly eligible to vote but who are not currently registered*—the Member State must initiate contact with at least 95% of these persons before the next federal election and inform these individuals how to register to vote.
  - *Voters whose data ERIC has deemed inaccurate or out-of-date*—the Member State must initiate contact with at least 95% of these voters within 90-days in an attempt to correct the inaccuracy or to obtain information to update the voter’s record.
- In addition, Member states must use their best efforts to:
  - Provide a process for voters whose voter registration was erroneously processed or unprocessed to cast a ballot that will be counted unless they are ineligible to vote;
  - Allow voter registration via the internet; and
  - Provide “more fully automated” (non-paper) voter registration transactions.
- Although not required to do so, Member states may also request data from ERIC “identifying voters who appear to have cast improper votes in a preceding election”—*i.e.*, voters who may have voted more than once in the same election or who voted on behalf of a deceased voter.

➤ **Proposed amendment - Maine Town & City Clerks’ Association.** Although it opposes the bill, if the committee moves forward the Association requests that section 4 of the bill be amended to require rulemaking to detail the process clerks must use to notify absentee a voter of a potential defect or defects in the signature or the affidavit on the return envelope of an absentee ballot.

➤ **State Mandate?** Maine Municipal Association suggested that the bill imposes a “[state mandate](#).” Under Article IX, Section 21 of the Maine Constitution, the State “may not” (1) “require a local unit of government to expand or modify that unit’s activities” (2) “so as to necessitate additional expenditures from local revenues”—this is a 2-part test—unless either:

- The State provides 90% of the funding for those expenditures; or
- 2/3 of the elected members of each chamber of the Legislature vote in favor of the legislation—if this option is selected, a “mandate preamble” should be added to the legislation.

If legislation that constitutes a state mandate is enacted without either the required funding or a mandate preamble, affected local units of government are not bound by the mandate contained within that legislation.

## INFORMATION REQUESTS

- For Maine Town & City Clerks’ Association— provide further information to quantify the potential cost to towns to implement LD 148.
- For Maine Municipal Association - provide examples of fraud occurring in other states that have implemented permanent absentee voting.

## TECHNICAL ISSUES

1. **Rulemaking.** Under the Maine Administrative Procedure Act, “the whole or any part of every . . . agency guideline . . . *that is or is intended to be judicially enforceable* and implements, interprets or makes specific the law administered by the agency, or describes the procedure or practices of the agency” should be the subject of rulemaking. The Committee may want to consider whether the “procedures designed by the Secretary of State” for an application for ongoing absentee voter status (bill §1) and the “procedure by which the voter may cure” a discrepancy on an absent ballot return envelope (bill §4) should be defined by the Secretary of State through rulemaking.
2. **Deadline to cure defects in signatures or affidavits on return envelopes:** As drafted, the bill requires clerks to notify voters of potential signature and affidavit defects on the return envelope within 24 hours (of receipt?) of an absentee ballot and to inform the voter of the procedure to cure the discrepancy. The Committee may want to consider whether the cure procedures should or should not allow a voter who submits an absentee ballot on election day to cure a discrepancy after election day. If not, the committee may wish to clarify whether the clerk is required to notify voters of potential defects if there is insufficient time before the polls close on election day for the voter to cure the discrepancy.

## FISCAL IMPACT

Not yet determined.

**Attachment: States with Permanent Absentee Voting for:  
All Voters, Voters with Permanent Disabilities and/or Senior Voters**

Some states permit voters to join a permanent absentee voting list, also known as a “single sign-on” list. This option may be offered to all voters, or to a limited number of voters based on certain criteria.

Five states and Washington, D.C., allow any voter to join a permanent absentee ballot list and will mail that voter an absentee ballot for each election going forward: Arizona, California, District of Columbia, Minnesota, Montana and New Jersey.

The other states listed in the table below put voters on a permanent list, based on certain criteria, usually age or disability. Note that in some cases a note from a physician or other indication of a permanent disability may be required.

State	Any Voter	Voters with Permanent Disabilities	Senior Voters (65 and Older)
<b>Arizona</b> Ariz. Rev. Stat. §16-544(A)	▪		
<b>California</b> Cal. Elec. Code §3200	▪		
<b>Connecticut</b> Conn. Gen. Stat. 9-140e		▪	
<b>District of Columbia</b> D.C. Law §1-1001.07	▪		
<b>Delaware</b> Del. Code Ann. Tit. 15, §5503(k)		▪	
<b>Kansas</b> Kan. Stat. Ann. §25-1122(h)		▪	
<b>Louisiana</b> <a href="#">Louisiana Secretary of State Disability Program</a>		▪	▪
<b>Minnesota</b> Minn. Rev. Stat. §203B.04(5)	▪		
<b>Mississippi</b> Miss. Code Ann. § 23-15-629		▪	
<b>Montana</b> Mont. Code Ann. §13-13-212(4)	▪		
<b>Nevada</b> N.R.S. 293.3165	See footnote <sup>2</sup>	▪	▪
<b>New Jersey</b> N.J. Stat. §19:63-3(e)	▪		

<sup>2</sup> Under the current version of this Nevada statute, permanent absentee voting is available to any voter.

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All Voters, Voters with Permanent Disabilities and/or Senior Voters**

State	Any Voter	Voters with Permanent Disabilities	Senior Voters (65 and Older)
<b>New York</b> N.Y. Election Law §8-400		▪	
<b>Tennessee</b> T. C. A. § 2-6-201		▪	
<b>West Virginia</b> W. Va. Code §3-3-2b		▪	
<b>Wisconsin</b> Wis. Stat. § 6.86(2)(a)		▪	▪

**An additional four states not included above automatically send absentee voter applications to voters on a permanent list.** This differs from the states captured in the table above since voters have to return the application before receiving an absentee ballot.

- Massachusetts (M.G.L. Ch. 54, §86), Missouri (Mo. Rev. Stat. §115.284) and Pennsylvania (25 P.S. § 3146.2(e1)) send permanently disabled voters absentee ballot applications each election.
- Alaska (Alaska Admin. Code tit. 6, § 25.650) permits the election supervisor to designate a person as a permanent absentee voter if the voter resides in a remote area where distance, terrain or other natural conditions deny the voter reasonable access to the polling place; the voter’s permanent residence is in an institution serving the aged or persons with disabilities; or the voter is disabled and has requested to be designated as a permanent absentee voter.