

SENATE

LOUIS JOSEPH LUCHINI, DISTRICT 7, CHAIR
CRAIG HICKMAN, DISTRICT 14
BRADLEE T. FARRIN, DISTRICT 3

JANET STOCCO, LEGISLATIVE ANALYST
SAMUEL PRAWER, LEGISLATIVE ANALYST
KAREN MONTELL, COMMITTEE CLERK



HOUSE

CHRISTOPHER J. CAIAZZO, SCARBOROUGH, CHAIR
JOYCE "JAY" MCCREIGHT, HARPSWELL
JOHN L. TUTTLE, JR., SANFORD
MORGAN J. RIELLY, WESTBROOK
LAURA D. SUPICA, BANGOR
BARBARA A. WOOD, PORTLAND
MARYANNE KINNEY, KNOX
MATTHEW A. HARRINGTON, SANFORD
PATRICK W. COREY, WINDHAM
JOSANNE C. DOLLOFF, MILTON TOWNSHIP

STATE OF MAINE
ONE HUNDRED AND THIRTIETH LEGISLATURE
COMMITTEE ON VETERANS AND LEGAL AFFAIRS

TO: Senator Anne Carney, Senate Chair
Representative Thom Harnett, House Chair
Joint Standing Committee on Judiciary

FROM: Senator Louis J. Luchini, Senate Chair LL
Representative Christopher J. Caiazzo, House Chair CC
Joint Standing Committee on Veterans and Legal Affairs

DATE: June 3, 2021

RE: Public records exception review of LD 1363

The Joint Standing Committee on Veterans and Legal Affairs requests the Joint Standing Committee on Judiciary's review, pursuant to 1 M.R.S. §434, of a public records exception included in the majority committee amendment to LD 1363, *An Act To Amend the Laws Governing Elections*.

On April 21, 2021, the Veterans and Legal Affairs Committee held a public hearing on LD 1363 and, in work session on May 14, 2021, the majority (7 members) voted to pass the bill as amended. A minority of the committee (5 members, with one member absent) opposed the bill.

The bill, which was submitted by the Secretary of State, covers a broad range of election issues. Most relevantly, the bill establishes a statutory process through which a voter who casts an absentee ballot may cure a defect discovered by the municipal clerk on the return envelope to ensure that the voter's absentee ballot is not rejected. The amendment revises these provisions of the bill for clarity.

The initial step of the process established by LD 1363 for curing a defect on a return envelope involves asking each voter who requests an absentee ballot to provide a phone number and an e-mail address. Section 17 of the amendment (page 4, line 5) provides that this information, if provided by the voter, is confidential and may be used only by the clerk to contact the voter.

After a voter has returned an absentee ballot, the municipal clerk must then examine each absentee ballot return envelope for the following defects: (a) a discrepancy in the signature on the voter's absentee ballot return envelope, (b) that the return envelope is missing a required

P. 7
of me
packet

signature or (c) that the affidavit or witness certification on the return envelope, if required,¹ is not properly completed. *See* Amendment Section 22 (page 4, line 22). If the municipal clerk discovers one of these defects on the return envelope, the municipal clerk must attempt to notify the voter of the process for curing the defect—but only if the voter provided either a telephone number or an e-mail address on the absentee ballot application as described in Section 17 of the amendment. If, after receiving notice from the municipal clerk, the voter cures the defect on the return envelope before the polls close on election day, the municipal clerk must accept the absentee ballot. If the voter does not cure the defect on the return envelope before the polls close on election day, the municipal clerk must either challenge or reject the absentee ballot. *See* Amendment Section 24 (pages 5-7).

Reviewing the statutory criteria for the proposed exception to public records, we would comment for the majority as follows:

A. Need to collect the information. It is necessary to collect a voter's telephone number or e-mail address on an absentee ballot application to provide the municipal clerk with an expeditious and efficient method for contacting an absentee voter whose return envelope contains a defect. Although a voter who applies for an absentee ballot provides the voter's residence address and, if applicable, a different address to which the voter wishes the absentee ballot to be mailed as part of an absentee ballot application under current law (21-A M.R.S. §753-A), there is often insufficient time after a voted absentee ballot is received by the municipal clerk for the clerk to notify the voter by mail of a defect on the return envelope and the process for curing that defect.

B. Value in maintaining information. Maintenance of this information—which will be included in the voter's absentee ballot application—is essential for the municipal clerk to perform the clerk's duties regarding the new process for curing a defect on an absentee ballot return envelope.

C. Federal law. We are unaware of any federal law that requires the voter's e-mail address and telephone number to be kept confidential.

D. Balancing the individual's privacy rights and the public interest. A voter who wishes to vote by absentee ballot has an interest in protecting the confidentiality of that voter's personal contact information. In the absence of this public records exception, a voter who does not wish to have the voter's telephone number or e-mail address divulged might hesitate to provide this information when applying for an absentee ballot. If so, the voter will risk the possibility that the voter's ballot will be rejected on the basis of a defect on the return envelope that could have been cured through the new statutory process outlined in the bill. The voter's interest in the privacy of this contact information and in ensuring that the voter's ballot is counted substantially outweighs, in our estimation, the public interest in the voter's telephone number and email address especially in light of the other information that is publicly available regarding absentee voters. As a general rule, a voter's absentee ballot application is a public record until the close of the polls on election day pursuant to 21-A

¹ Under current 21-A M.R.S. §754-A(3), a voter who requires the assistance of an aide in reading or marking an absentee ballot must mark the ballot and complete and sign an affidavit on the return envelope (or have the aide mark the ballot and sign the affidavit) in the presence of two witnesses, who must each sign a witness certification on the return envelope. Under current 21-A M.R.S. §754-A(2), if an absentee ballot is delivered to a voter or returned to the municipal clerk by a third person who is not the voter's immediate family member, the voter must mark the ballot and complete and sign an affidavit on the return envelope in the presence of two witnesses, who must sign also a witness certification on the return envelope.

M.R.S. §764. A member of the public may request an opportunity to inspect absentee ballot applications before absentee ballots are processed either before or on election day under 21-A M.R.S. §759(8) and §760-B(3). In addition, the municipal clerk must also enter detailed information in the central voter registration system regarding the identity of each absentee voter, the method by which the voter requested an absentee ballot, whether that ballot was accepted or rejected and the reason for rejecting the ballot, if any. *See* §753-B(6), part of which appears in Section 21 of the amendment to LD 1363. This central voter registration information on absentee voters must be made accessible “to any person upon request and free of charge” under the provisions of current §196-A(1)(D). Given the records available for public inspection related to a voter’s absentee ballot application, we do not believe that exempting the voter’s e-mail address and phone number causes any undue harm to public access and transparency.

E. Balancing the effect of disclosure on business competition against the public interest. We are unaware of any connection between this information and competitive disadvantages of any business in this State.

F. Interfering in public negotiations. We are unaware of any connection between this information and negotiations involving a public body.

G. Balancing the public interest and potential jeopardy to public safety or a member of the public. Please see the response to item D above.

H. Narrowness of the exception. Please see the response to item D above.

I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public’s interest in the record protected by the proposed exception.

Thank you for reviewing this proposed public records exception. Please find copies of the amendment attached. We look forward to meeting with you.

cc: Members, Joint Standing Committee on Veterans and Legal Affairs
Peggy Reinsch, Legislative Analyst to the Joint Standing Committee on Judiciary

ROFS

Date: (Filing No. S-)

VETERANS AND LEGAL AFFAIRS

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

130TH LEGISLATURE

FIRST SPECIAL SESSION

COMMITTEE AMENDMENT " " to S.P. 450, L.D. 1363, "An Act To Amend the Laws Governing Elections"

Amend the bill in section 3 in subsection 1 in the 5th line (page 1, line 36 in L.D.) by inserting after the first occurrence of the following: "individual" the following: 'that provides proof of voter eligibility'

Amend the bill by striking out all of section 4 and inserting the following:

'Sec. 4. 21-A MRSA §232, sub-§5 is enacted to read:

5. Implementation. Notwithstanding any provision of law to the contrary, the bureau may conduct the activities in subsections 1 to 3 beginning January 1, 2022 but is not required to comply with the requirements of subsections 1 to 3 until June 1, 2022.'

Amend the bill by striking out all of section 6.

Amend the bill in section 8 in §441 in subsection 2 in the 3rd and 4th lines (page 3, lines 25 and 26 in L.D.) by striking out the following: "of the enrollment qualifications, subject to the restrictions in section 144, for voters eligible" and inserting the following: 'of the enrollment qualifications, subject to the restrictions in section 144, for voters eligible'

Amend the bill in section 8 in §441 in subsection 2 in the 4th line (page 3, line 26 in L.D.) by striking out the following: "of whether unenrolled voters will be eligible"

Amend the bill in section 8 in §441 in subsection 2 in the last 2 lines (page 3, lines 28 and 29 in L.D.) by striking out the following: "A voter may vote in the primary election of only one qualified party."

Amend the bill by striking out all of section 13 and inserting the following:

'Sec. 13. 21-A MRSA §752-B is enacted to read:

§752-B. Secured drop boxes for the return of absentee ballots

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

COMMITTEE AMENDMENT

A

R.O.F.S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

A. "Absentee voting period" means the time period beginning on the first date that absentee ballots are issued by the municipality and ending at 8 p.m. on election day.

B. "Secured drop box" means a device containing a slot or chute through which an absentee voter may deposit an absentee ballot into a secure, locked collection box in accordance with the requirements of this section.

2. Secured drop boxes authorized. A municipality may obtain and install a secured drop box that meets the requirements of this section. The secured drop box may be used by voters who are authorized to return absentee ballots in a secured drop box pursuant to section 754-A, subsection 1, paragraph D.

3. Location and number of secured drop boxes. The secured drop box must be located outside the municipal office building or the building where in-person absentee voting takes place before an election. If the secured drop box is positioned within or against an outside wall of the municipal office building, it must be bolted or otherwise securely fastened to the wall or to the deck or landing to prevent its removal by an unauthorized person. Otherwise, the secured drop box must be securely affixed to a post that is sunk into the ground, affixed to a post that is set into a concrete pad or bolted or otherwise securely affixed to a platform or other structure in a manner that prevents removal of the drop box by an unauthorized person.

A municipality may seek approval from the Secretary of State to obtain and install an additional secured drop box or boxes at other locations within the municipality by certifying to the Secretary of State at least 90 days before the election that the additional secured drop box or boxes meet all of the requirements of this section, other than the requirement that the secured drop box be located outside of the municipal office building or the building where in-person absentee voting takes place before an election.

4. Secured drop box design; accessibility. The slot or chute of a secured drop box must be designed to prevent an individual from reaching into the slot or chute and accessing the contents of the secure collection box and to protect the contents of the secure collection box from the elements. The secured drop box must include a mechanism to close and lock the slot or chute in a manner that prevents the deposit of additional absentee ballots at 8 p.m. on election day as provided in subsection 8. A secured drop box must comply with guidelines issued by the Secretary of State to ensure accessibility to individuals with disabilities.

5. Monitoring of secured drop box. During the absentee voting period, each secured drop box must be monitored periodically by law enforcement personnel, municipal staff or a surveillance camera.

6. Labeling of secured drop box. A secured drop box must be labeled, or a sign must be posted on or near the secured drop box, to indicate that it is an official secured drop box for the return of absentee ballots. Unless the secured drop box is affixed to the outside wall of the municipal office building, the label or sign must include the name of the municipality. A municipality may include on the label or sign instructions for voters regarding absentee voting requirements and warnings against use of the secured drop box by voters of other municipalities.

7. Use and access during absentee voting period. The secured drop box must be used only for the return of absentee ballots and not for the deposit of other municipal office

5

ROFS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

filings during the absentee voting period. During the absentee voting period, only the municipal clerk or designees under subsection 8 may possess the key to the secured drop box or have access to the contents of the secured collection box. If items other than returned absentee ballots are deposited in the secured drop box during the absentee voting period, the municipal clerk or designees shall deliver those items to the appropriate municipal official.

8. Periodic retrieval of ballots. During the absentee voting period, the municipal clerk or a team of 2 people designated by the clerk shall periodically remove absentee ballots from each secured drop box and deliver the absentee ballots to the clerk's office to be stored in a secure manner. At a minimum, absentee ballots must be removed from each secured drop box by the clerk or team of 2 designees:

A. At least once on each day that the clerk's office is open during the absentee voting period;

B. At all additional times necessary to ensure that additional absentee ballots deposited in the secured drop box fit within the secured collection box and are not accessible to unauthorized persons; and

C. At 8 p.m. on election day.

The identity of the persons who remove the absentee ballots from each secured drop box and the date and time that the absentee ballots are removed must be recorded on a form designed by the Secretary of State and initialed or signed by the clerk or team of 2 designees who removed the absentee ballots.

9. Locking of secured drop boxes when polls close. The municipal clerk or team of 2 designees under subsection 8 shall lock the secured drop box at 8 p.m. on election day to prevent the deposit of additional absentee ballots in the secured drop box.'

Amend the bill by striking out all of section 14 and inserting the following:

'**Sec. 14. 21-A MRSA §753-A, sub-§3, ¶A,** as enacted by PL 2003, c. 447, §28, is amended by amending subparagraph (1) to read:

(1) The voter's name and date of birth;'

Amend the bill by striking out all of section 15.

Amend the bill by striking out all of section 16 and inserting the following:

'**Sec. 16. 21-A MRSA §753-A, sub-§6,** as amended by PL 2009, c. 563, §1, is further amended to read:

6. Application by electronic means. A municipal clerk shall accept absentee ballot applications by the electronic means authorized by the Secretary of State. The Secretary of State shall design or approve the form of the absentee ballot application to be submitted by electronic means.

A voter may make an application for the voter's own ballot by electronic means using the form designed or approved by the Secretary of State. The voter may not designate an immediate family member or a 3rd person to deliver the ballot on the voter's behalf. An electronic application must be accepted by the clerk if it contains the voter's name, the voter's date of birth, the voter's residence address or other address sufficient to identify the voter and, if applicable, a different address to which the applicant requests the ballot be



ROFS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

sent or delivered. The clerk shall verify that it is the voter who is requesting the ballot by confirming the voter's residence address and ~~birth~~ date of birth with the information in the voter's record. The clerk shall print the electronically submitted application and write "electronic request" on the application.

Sec. 17. 21-A MRSA §753-A, sub-§7 is enacted to read:

7. Telephone and e-mail contact information. In addition to any required information, a voter applying for an absentee ballot under this section must be asked to provide that voter's telephone number and e-mail address, if available. Notwithstanding Title 1, chapter 13, subchapter 1, the voter's telephone number and e-mail address are confidential and may be used only by municipal election officials to contact the voter.'

Amend the bill by inserting after section 20 the following:

'Sec. 21. 21-A MRSA §753-B, sub-§6, ¶A, as amended by PL 2013, c. 457, §3, is further amended to read:

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. If the clerk determines that there is a defect on the return envelope of an absentee ballot under section 756, subsection 2 and that defect is cured pursuant to section 756-A, the clerk shall note whether the ballot was accepted or accepted but challenged and shall list the date that the defect was cured as the date that the ballot was received. 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, accepted but challenged 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.'

Amend the bill by striking out all of section 22 and inserting the following:

'Sec. 22. 21-A MRSA §756, sub-§2, as amended by PL 2009, c. 538, §9, is further amended to read:

2. Clerk to examine signatures and affidavit. The clerk shall compare the signature of the voter on the application, ~~where~~ when required, with that on the corresponding return envelope. The clerk shall also examine the affidavit and witness certification, if any, on the return envelope. ~~If the signatures appear to have been made by the same person and if the affidavit is properly completed, the clerk shall write "OK" and the clerk's initials on the return envelope. Otherwise, the clerk shall note any discrepancy on the return envelope.~~

R O F S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44

A. If the signatures appear to have been made by the same person and if the affidavit and witness certification are properly completed, when required, the clerk shall write "OK" and the clerk's initials on the return envelope. If the affidavit and witness certification are properly completed, when required, and the signatures do not appear to have been made by the same person, but this discrepancy is apparently the result of the voter's having properly obtained assistance under either section 753-A, subsection 5, or section 754-A, subsection 3, or both, then the clerk shall note the discrepancy on the return envelope, but shall also write "OK" and the clerk's initials on the return envelope.

B. If the voter provided a telephone number or e-mail address with the voter's absentee ballot application and if the clerk determines that there is a discrepancy in the signature on the return envelope that is not described in paragraph A, that the return envelope is missing a signature or that the affidavit or witness certification on the return envelope is not properly completed, the clerk shall notify the voter pursuant to section 756-A of the process by which the voter may cure the defect with the return envelope.

(1) If the defect is corrected under the procedures in section 756-A prior to the deadline for returning absentee ballots under section 755, the clerk shall initial the return envelope, indicate whether the ballot is accepted or accepted but challenged as provided in section 756-A and, if the ballot is challenged, indicate the basis for the challenge.

(2) If the defect is not corrected under the procedures in section 756-A prior to the deadline for returning absentee ballots under section 755, the clerk shall initial the return envelope and indicate that the ballot is accepted but challenged or rejected as provided in section 756-A and the basis for rejecting or challenging the ballot.

C. If the voter did not provide a telephone number or e-mail address with the voter's absentee ballot application and if the clerk determines that there is a discrepancy in the signature on the return envelope that is not described in paragraph A, the clerk shall initial the return envelope and indicate that the ballot is accepted but challenged and indicate the basis for the challenge. If the voter did not provide a telephone number or e-mail address with the voter's absentee ballot application and if the clerk determines that the return envelope is missing a signature or that the affidavit or witness certification on the return envelope is not properly completed, the clerk shall initial the return envelope and indicate that the ballot is rejected and the basis for rejecting the ballot.'

Amend the bill by striking out all of section 23.

Amend the bill by striking out all of sections 24 to 27 and inserting the following:

'Sec. 24. 21-A MRSA §756-A is enacted to read:

§756-A. Procedures for curing absentee ballot return envelope defects

1. Notice to voters. If the clerk determines that there is a defect on the absentee ballot return envelope described in section 756, subsection 2, paragraph B and the absentee voter provided a telephone number or e-mail address with the voter's absentee ballot application, the clerk shall notify the voter of the defect and explain that the ballot may be rejected or challenged unless the defect is cured as provided in this section. The clerk must notify the voter within one business day of receiving the absentee ballot, unless the absentee ballot is

8

ROFS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

received on election day or less than 24 hours before election day, in which case the clerk shall make a good faith effort to notify the voter as quickly as possible. Notification must be made by telephone if the absentee voter provided a telephone number on the voter's absentee ballot application. If the clerk attempts to notify the voter by telephone but does not speak directly with the voter, the clerk shall leave a voice mail message if available and shall notify the voter by e-mail, using the e-mail address provided on the absentee ballot application, if any. If the voter did not provide a telephone number on the absentee ballot application, the clerk shall notify the voter by e-mail, using the e-mail address provided on the absentee ballot application, if any.

2. Mismatched voter signatures. If the voter's signature on the return envelope does not appear to have been made by the same person who signed the absentee voter application and this discrepancy does not appear to be the result of the voter's having properly obtained assistance under either section 753-A, subsection 5 or section 754-A, subsection 3, or both, the following procedures apply.

A. The voter may cure the defect in person or by telephone by self-identifying by name, date of birth and residence address and confirming that the voter requested an absentee ballot, the voter or the voter's aide under section 754-A, subsection 3 placed the absentee ballot in the return envelope and the voter personally signed the return envelope. If the voter confirms this information in person or by telephone before the deadline for returning absentee ballots under section 755, the clerk shall accept the ballot without challenge and make a notation on the return envelope that the voter confirmed by telephone that the voter personally signed the return envelope.

B. If the voter does not cure the defect under the procedure in paragraph A before the deadline for returning absentee ballots under section 755, the clerk shall accept the ballot but challenge it pursuant to section 673, subsection 1.

3. Missing voter signature. If the voter's signature does not appear on the return envelope, the following procedures apply.

A. The voter may cure the defect in person at the clerk's office by self-identifying by name, date of birth and residence address and either signing the original return envelope or removing the absentee ballot from the original return envelope, inspecting the absentee ballot, sealing the absentee ballot in a new return envelope and signing the new return envelope. If the voter cures the defect as provided in this paragraph before the deadline for returning absentee ballots under section 755, the clerk shall accept the absentee ballot without challenge.

B. The voter may cure the defect by telephone by self-identifying by name, date of birth and residence address and confirming that the voter requested an absentee ballot and the voter or the voter's aide under section 754-A, subsection 3 placed the absentee ballot in the return envelope. If the voter confirms this information, by telephone, before the deadline for returning absentee ballots under section 755, the clerk shall accept the ballot but challenge it pursuant to section 673, subsection 1.

C. If the voter does not cure the defect under the procedures in paragraph A or B before the deadline for returning absentee ballots under section 755, the clerk shall reject the ballot in accordance with section 759, subsection 3.

COMMITTEE AMENDMENT

(9)

ROFS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

4. Aide or witness certification incomplete. If an aide-executed affidavit or aide or witness certification on a return envelope that is required under section 754-A, subsection 1, paragraph C, subsection 2, paragraph C or subsection 3, paragraph E is unsigned, incomplete or improperly completed, the following procedures apply.

A. The voter may contact the voter’s aide or witness and request that the aide or witness cure the defect by appearing in person at the clerk’s office and properly completing the affidavit or witness certification. If the aide or witness corrects the affidavit or witness certification as provided in this paragraph before the deadline for returning absentee ballots under section 755, the clerk shall accept the absentee ballot without challenge.

B. The voter may cure the defect by telephone by self-identifying by name, date of birth and residence address, confirming that the voter requested an absentee ballot and explaining whether a 3rd person other than the voter’s immediate family member delivered or returned the absentee ballot or whether the voter received the assistance of an aide as described in section 754-A, subsection 3 in reading, marking or placing the ballot in the return envelope. If the voter provides the information required by this paragraph, by telephone, before the deadline for returning absentee ballots under section 755, the clerk shall accept the ballot but challenge it pursuant to section 673, subsection 1.

C. If the voter does not cure the defect under the procedures in paragraph A or B before the deadline for returning absentee ballots under section 755, the clerk shall reject the ballot in accordance with section 759, subsection 3.

5. Duplicate ballot. Notwithstanding section 753-B, subsection 4, a voter who receives notification of a defect on the voter’s absentee ballot return envelope under subsection 1 may, instead of curing the defect pursuant to subsections 2 to 4, request that the clerk issue a 2nd absentee ballot to the voter. If a request for a 2nd absentee ballot is made under this subsection, the following procedures apply.

A. The clerk shall reject the first absentee ballot in accordance with section 759, subsection 3.

B. The clerk shall write "second ballot issued" on the 2nd absentee ballot return envelope and include with the 2nd absentee ballot written instructions for signing and completing the affidavit and witness certification on the return envelope and a written notice identifying the problem with the voter’s first absentee ballot return envelope.

C. The voter may request that the clerk issue the 2nd absentee ballot to the voter in person at the clerk’s office; by mail to the address listed on the original absentee ballot application or on a new written absentee ballot application submitted by the voter; or to an immediate family member or a 3rd person listed on the original absentee ballot application or on a new written absentee ballot application submitted by the voter. If the voter does not indicate a preferred method for issuing the 2nd absentee ballot, the clerk shall issue the 2nd absentee ballot by mail to the address listed on the original absentee ballot application.

6. Challenged ballots; hearing not required. The clerk is not required to conduct the hearing described in section 673, subsection 7 when a clerk accepts but challenges an absentee ballot under this section.

ROFS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

Sec. 25. 21-A MRSA §759, sub-§2, as amended by PL 2007, c. 455, §42, is further amended to read:

2. Accepted if correct. If the warden finds that the affidavit is and the aide and witness certification, if required, are properly completed, that the clerk has verified that the signature on the envelope matches the signature on the application where or that the voter confirmed that the voter personally signed the return envelope pursuant to section 756-A, subsection 2 when applicable, that the ~~person~~ voter is registered and enrolled where when necessary, the warden shall then examine the incoming voting list to determine whether the voter voted in person at the election. The warden shall then announce the name of each absentee voter who has not voted at the election and remove each ballot from its envelope without destroying the envelope or unfolding the ballot. After having an election clerk from a political party different from that of the warden mark the letters "AV" beside the name of each absentee voter on the incoming voting lists and place a check mark or horizontal line in red ink on the list beside the voter's name, the warden shall accept the ballot.

Sec. 26. 21-A MRSA §759, sub-§3, ¶A, as amended by PL 1999, c. 645, §9, is repealed.

Sec. 27. 21-A MRSA §759, sub-§3, ¶A-1 is enacted to read:

A-1. The clerk's notes on the envelope indicate that the ballot was rejected;

Sec. 28. 21-A MRSA §759, sub-§3, ¶B, as enacted by PL 1985, c. 161, §6, is repealed.

Sec. 29. 21-A MRSA §765 is enacted to read:

§765. Absentee ballot tracking

The Secretary of State shall establish and maintain an online service that allows a voter who requests an absentee ballot to track the status of the absentee ballot process.

Sec. 30. 21-A MRSA §803, as amended by PL 1989, c. 166, §6, is further amended to read:

§803. Duties of Governor

As soon as possible after the presidential electors are chosen, the Governor shall send a certificate of the determination of the electors to the Archivist of the United States under the state seal. The certificate ~~shall~~ must state the names of the electors and the number of votes ~~which each received~~ each candidate for President received statewide and for each congressional district in the final round of tabulation under section 723-A. The Governor shall deliver 6 certificates under the state seal to the electors on or before the first Monday after the 2nd Wednesday of December, following their election.

Sec. 31. Effective date. That section of this Act that enacts the Maine Revised Statutes, Title 21-A, section 232, subsection 5 takes effect January 1, 2022.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

ROFS

SUMMARY

This amendment, which is the majority report of the committee, makes the following changes to the bill.

1. It clarifies that the requirement that the Department of the Secretary of State, Bureau of Motor Vehicles scan documentation when creating a pending voter registration record for an individual who has not opted out of automatic voter registration applies only to documentation that provides proof of voter eligibility. It also delays from January 1, 2022 to June 1, 2022 the date upon which the bureau is required to conduct automatic voter registration.

2. It strikes the provision of the bill that changes the requirements for a political party to retain its qualification.

3. It reorganizes and streamlines the provisions of the bill that establish the requirements for secured drop boxes for absentee ballots and the process by which a voter may cure a defect on the return envelope for an absentee ballot. It also clarifies that, when a voter cures a defect on the return envelope, the municipal clerk must update the voter registration system to list the date that the defect was cured as the date that the absentee ballot was received.

4. It clarifies that a written request for an absentee ballot must include the voter's date of birth and an electronic application for an absentee ballot must include the voter's name, date of birth, residence address or other address sufficient to identify the voter and, if applicable, a different address to which the voter requests the ballot be sent or delivered.

5. It clarifies that, as in current law, an absentee ballot must be rejected if the voter is not registered to vote or, when necessary to vote in a primary election, when the voter is not enrolled in the relevant political party.

6. It requires the Secretary of State to establish and maintain an online service that allows an absentee voter to track the status of the absentee ballot process.

7. It provides that, when certifying the results of the general election for United States President in the State, the Governor must report the number of votes that each candidate for President received statewide and for each congressional district in the final round of ranked-choice voting tabulation.

FISCAL NOTE REQUIRED

(See attached)



130th MAINE LEGISLATURE

LD 1363

LR 439(02)

An Act To Amend the Laws Governing Elections

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Veterans and Legal Affairs

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Additional costs to the Department of Secretary of State associated with this legislation can be absorbed within existing budgeted resources.

13

TITLE 21-A: ELECTIONS**§196-A. Use and distribution of central voter registration system information**

1. Access to data from the central voter registration system. For the purposes of Title 1, section 402, information contained electronically in the central voter registration system and any information or reports generated by the system are confidential and may be accessed only by municipal and state election officials for the purposes of election and voter registration administration, and by others only as provided in this section.

A. An individual voter may obtain any information contained in that voter's record within the central voter registration system either from the registrar in the voter's municipality of residence or from the Secretary of State. The individual voter information must be made available to that voter upon request and free of charge. The Secretary of State may design a report to facilitate providing information to an individual voter.

B. A political party, or an individual or organization engaged in so-called "get out the vote" efforts directly related to a campaign or other activities directly related to a campaign, or an individual who has been elected or appointed to and is currently serving in a municipal, county, state or federal office, may purchase a list or report of certain voter information from the central voter registration system by making a request to the Secretary of State or to a registrar if the information requested concerns voters in that municipality. The Secretary of State or the registrar shall make available the following voter record information, subject to the fees set forth in subsection 2: the voter's name, residence address, mailing address, year of birth, enrollment status, electoral districts, voter status, date of registration, date of change of the voter record if applicable, voter participation history, voter record number and any special designations indicating uniformed service voters, overseas voters or township voters. Any person obtaining, either directly or indirectly, information from the central voter registration system under this paragraph may not sell, distribute or use the data for any purpose that is not directly related to activities of a political party, "get out the vote" efforts directly related to a campaign or other activities directly related to a campaign. This paragraph does not prohibit political parties, party committees, candidate committees, political action committees or any other organizations that have purchased information from the central voter registration system from providing access to such information to their members for purposes directly related to party activities, "get out the vote" efforts or a campaign. For purposes of this paragraph, "campaign" has the same meaning as in section 1052, subsection 1.

C. The registrar shall make available, in electronic form and free of charge, upon the request of any person authorized under section 312 to obtain a municipal caucus list, the following voter record information for each voter in the municipality: the voter's name, residence address, mailing address, enrollment status, electoral districts, voter status, voter record number and any special designation indicating whether the voter is a uniformed service voter, overseas voter or township voter. The Secretary of State also shall make available the statewide caucus list, in electronic form and free of charge, to the state committee of each political party.

D. A municipal clerk or registrar shall make available to any person upon request and free of charge an electronic list of voters who requested or were furnished absentee ballots for their municipality for a specified election. The Secretary of State may make available free of charge the statewide absentee voter list in electronic form. The electronic list must include the information provided in section 753-B, subsection 6, paragraph A, except that the voter's record number must be provided instead of the voter's name and residence address. In addition, a municipal clerk or registrar shall make available upon request, subject to the fees set forth in subsection 2, paragraph A, the printed list, created and maintained pursuant to section 753-B, of voters who requested or were furnished absentee ballots.

E. The Secretary of State or a registrar may make available, upon the request of any other governmental or quasi-governmental entity, certain voter information for that entity's authorized use only. The following information may be provided in electronic form and free of charge: the voter's name, year of birth, residence address, mailing address, electoral districts, voter status, date of registration or date of change of the voter record if applicable, voter record number and any special designations indicating uniformed service voters, overseas voters or township voters. Data made available under this paragraph may not be used for solicitation or for purposes other than the governmental or quasi-governmental entity's authorized activities and may not be redistributed.

Authorized uses of the data by the Legislature include providing voter information to a Legislator for purposes of communicating with the Legislator's constituents and conducting legislative business.

F. The Secretary of State shall make available to any person upon request and free of charge the following voter record information in electronic form: either the voter's first name or last name, but not both names in the same report; year of birth; enrollment status; electoral districts to include congressional district and county only; voter status; date of registration or date of change of the voter record if applicable; date of the last statewide election in which the voter voted; and any special designations indicating uniformed service voters, overseas voters or township voters. The Secretary of State or the registrar also may make available to any person upon request and free of charge any report or statistical information that does not contain the names, dates of birth, voter record numbers or addresses of individual voters.

G. The Secretary of State or a registrar shall make available free of charge any information pertaining to individual voters, other than participants in the Address Confidentiality Program established in Title 5, section 90-B, that is contained in the central voter registration system to a law enforcement officer or law enforcement agency that makes a written request to use the information for a bona fide law enforcement purpose or to a person identified by a court order if directed by that order. Information pertaining to individual voters who are Address Confidentiality Program participants that is contained in the central voter registration system may be made available for inspection to a law enforcement agency that is authorized by the Secretary of State pursuant to Title 5, section 90-B to obtain Address Confidentiality Program information. Data made available under this paragraph may not be used for purposes other than law enforcement or as directed in the court order.

H. When responding to a request about a specific voter registered in a specific municipality, the registrar of that municipality or the Secretary of State may use information contained in the central voter registration system to provide the registration status, enrollment status and electoral districts for that voter.

I. The Secretary of State shall make available free of charge to the federal or state court system the voter registration information for voters, other than participants in the Address Confidentiality Program established in Title 5, section 90-B, statewide or by district as requested for the purpose of jury selection or other bona fide court purposes.

2. Fees. For the purpose of calculating fees pursuant to this section, a record includes the information on one individual voter. Fees paid to the Secretary of State must be deposited into a dedicated fund for the purpose of offsetting the cost of providing the information and maintaining the central voter registration system and other authorized costs relating to compliance with the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666. A municipality may keep the fees paid to the municipality. The fees for information provided pursuant to this section are as follows:

A. The fee for information provided in printed form is \$1 for the first page and 25¢ per page for all additional pages, except that the fee for additional pages of mailing labels is 75¢ per page; and

B. The fee for information provided in electronic form is based on the number of records requested. The fee entitles the requestor to receive the initial electronic report or file and, upon request, up to 11

updates free of charge during the subsequent 12-month period, except that no more than one free update may be requested during any 30-day period. The fee schedule is as follows:

- (1) For 900,001 or more voter records, \$2,200;
- (2) For 600,001 to 900,000 voter records, \$1,650;
- (3) For 400,001 to 600,000 voter records, \$1,100;
- (4) For 250,001 to 400,000 voter records, \$825;
- (5) For 150,001 to 250,000 voter records, \$550;
- (6) For 100,001 to 150,000 voter records, \$275;
- (7) For 75,001 to 100,000 voter records, \$220;
- (8) For 50,001 to 75,000 voter records, \$182;
- (9) For 35,001 to 50,000 voter records, \$138;
- (10) For 25,001 to 35,000 voter records, \$83;
- (11) For 15,001 to 25,000 voter records, \$55;
- (12) For 7,501 to 15,000 voter records, \$33;
- (13) For 1,001 to 7,500 voter records, \$22; or
- (14) For 1 to 1,000 voter records, \$11.

3. Response to requests. Municipal clerks, registrars and the Secretary of State's office shall respond to all requests for information from the central voter registration system pursuant to this section within 5 business days of receipt of a written request and upon payment of any applicable fee. A municipal clerk or registrar may provide only information concerning voters registered within that municipal jurisdiction. The Secretary of State may design a form to be used for all requests for information or lists from the central voter registration system.

§753-A. Procedure for requesting an absentee ballot

1. Applications available. On request, the clerk shall furnish a reasonable number of absentee ballot applications to any person, except that an application may not be furnished more than 3 months before the election for which the application will be used. This subsection does not apply to a uniformed service voter or an overseas voter who requests an absentee ballot under this subchapter.

2. Application for state and municipal ballots at same time. If a municipal election is to be held on the same date as a statewide election, absentee ballots for the municipal and statewide election may be issued in response to the same application unless the municipal ballots are not ready to be issued at the time the statewide ballot is available. The clerk may not delay the issuance of a statewide absentee ballot in order to include a municipal ballot pursuant to this subsection.

3. Request in writing. A voter may complete an application or make a written request for the voter's own ballot by mail, in person or by facsimile. The voter may designate an immediate family member or a 3rd person to deliver the ballot on the voter's behalf. An immediate family member of a voter may also make an application or written request for an absentee ballot for the voter.

A. An application or a written request for an absentee ballot must be accepted by the clerk if it contains the following information:

- (1) The voter's name;

- (2) The voter's residence address or other address sufficient to identify the voter;
 - (3) The signature of the voter or the voter's immediate family member who is making the application or written request. If an immediate family member is either making the application or written request or is designated in the application or written request to deliver or return the ballot to the voter, then the family relationship to the voter must also be provided; and
 - (4) If applicable, a different address to which the applicant requests the ballot be sent or delivered.
- B. If the voter needs assistance pursuant to subsection 5, then in addition to the information required in paragraph A, the following information must be provided in order for the application or written request to be accepted by the clerk:
- (1) The printed name and signature of the person who helped the voter; and
 - (2) A statement that the aide helped the voter by either reading or signing the application, or both.
- C. If the voter wishes to have the ballot delivered or returned by a 3rd person, then in addition to the information required in paragraph A, the following information must be provided in order for the application or written request to be accepted by the clerk:
- (1) The name of the 3rd person whom the voter has designated. A 3rd person may only be designated in an application or written request that is signed by the voter.

4. Application by telephone. A voter may make a telephone application for the voter's own ballot. In this case, the voter may not designate an immediate family member or a 3rd person to deliver the ballot on the voter's behalf. The clerk shall ask the voter for the information required and complete the application, with the exception of the voter's signature, and shall write "telephone request" on the application. The clerk shall also obtain the voter's birth date and write it on the application. The clerk shall verify that it is the voter who is requesting the ballot by confirming the voter's residence address and birth date with the information in the voter's record. A telephone application must be accepted by the clerk if it contains the voter's name, the voter's date of birth, the voter's residence address or other address sufficient to identify the voter and, if applicable, a different address to which the applicant requests the ballot be sent or delivered.

5. Assistance to certain voters. A voter who is unable to read, sign or complete an application because of physical disability, illiteracy or religious faith may request another person, other than the voter's employer or agent of that employer or an officer or agent of the voter's union, to assist the voter in reading, signing or completing the application. If an aide assists a voter by reading or signing the application, the aide shall complete and sign the certificate on the application stating that the aide has assisted the voter.

6. Application by electronic means. A municipal clerk shall accept absentee ballot applications by the electronic means authorized by the Secretary of State. The Secretary of State shall design or approve the form of the absentee ballot application to be submitted by electronic means.

A voter may make an application for the voter's own ballot by electronic means using the form designed or approved by the Secretary of State. The voter may not designate an immediate family member or a 3rd person to deliver the ballot on the voter's behalf. The clerk shall verify that it is the voter who is requesting the ballot by confirming the voter's residence address and birth date with the information in the voter's record. The clerk shall print the electronically submitted application and write "electronic request" on the application.

§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.
- 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.

§759. Counting procedure

The following counting procedure must be observed at each voting place.

1. Warden to review notes of clerk. Unless a request to inspect applications and envelopes is made pursuant to subsection 8, the warden shall review the notes of the clerk on each return envelope according to the schedule posted under subsection 7.

2. Accepted if correct. If the warden finds that the affidavit is properly completed, that the clerk has verified that the signature on the envelope matches the signature on the application where applicable, that the person is registered and enrolled where necessary, the warden shall then examine the incoming voting list to determine whether the voter voted in person at the election. The warden shall then announce the name of each absentee voter who has not voted at the election and remove each ballot from its envelope without destroying the envelope or unfolding the ballot. After having an election clerk from a political party different from that of the warden mark the letters "AV" beside the name of each absentee voter on the incoming voting lists and place a check mark or horizontal line in red ink on the list beside the voter's name, the warden shall accept the ballot.

3. Rejected if incorrect. The warden may not open the envelope and shall write "Rejected" on it, the reason why and the warden's initials if the warden finds that:

- A. The signatures do not appear to have been made by the same person and the discrepancy is not the result of the voter's having obtained assistance under section 753-A, subsection 5 or section 754-A, subsection 3, in cases where an application is required;
- B. The affidavit is not properly completed;
- C. The person is not registered or enrolled where necessary;
- D. The voter has voted in person; or
- E. The ballot was received by the clerk after the deadline.

4. Warden to check absentee ballot for correct party or district. At a primary election when the warden removes a ballot from its envelope, the warden shall check its color to be sure it is the ballot of the party in which the voter is enrolled. If it is not, the warden shall immediately replace it in its envelope, reseal the envelope and write "Rejected" on it, the reason why and the warden's initials. At a primary or general election, in a municipality that has more than one voting district, when the warden removes a ballot from its envelope, the warden shall check its color to be sure it is the ballot of the district in which the voter is registered. If it is not, the warden shall challenge the ballot according to section 673.

5. Rejected ballots separate. The warden shall place the return envelopes containing rejected ballots in an envelope marked "Rejected ballots." Rejected ballots may not be counted.

6. Ballots counted. As soon as the absentee ballots are processed, they are counted the same as regular ballots.

7. Processing before close of polls. A notice signed by the municipal clerk must be posted at least 7 days before election day in the same manner as posting the notice of election, under section 621-A, stating each specific time that the clerk intends to begin processing absentee ballots on election day. The warden shall follow the procedures required by subsections 1 to 6 to process absentee ballots before the close of the polls. The clerk shall notify the chairs of each political party of the municipality, in writing, that this procedure is to occur. This notice must be considered sufficient as long as it is mailed to the last address of each municipal chair that is known to the clerk.

8. Inspection of absentee envelopes before processing. If a member of the public notifies the clerk before 5 p.m. on the day before election day that the person wishes to inspect absentee ballot applications and envelopes before they are processed, the warden or clerk shall allow the requestor to inspect the applications and envelopes of ballots before they are processed or for 30 minutes after the time specified in the notice for processing on election day. The warden may immediately proceed to process the ballots after the person has completed the review.

If the municipality processes absentee ballots only after the polls close on election day, then a member of the public who wishes to inspect absentee materials must notify the warden by 5 p.m. on election day that the person wishes to inspect absentee ballot applications and envelopes after the polls close. The warden shall allow the requestor to inspect the applications and envelopes for 30 minutes after the polls close. The warden may immediately proceed to process the ballots after the person has completed the review.

§760-B. Procedures when clerk processes absentee ballots prior to election day

Any municipality or jurisdiction that conducts its own elections may opt to process absentee ballots beginning on the 4th day immediately prior to election day. The clerk shall use the following procedure when processing the absentee ballots during this time.

1. Time for processing. In a municipality that has opted to process absentee ballots on one or more of the days prior to election day authorized by this section, the municipal clerk or the clerk's designees may process absentee ballots at the times designated by the clerk, between the hours of 9:00

a.m. and 9:00 p.m., except that if an inspection is requested pursuant to subsection 3, processing may not begin until after the inspection period has concluded.

2. Notice of early processing. The clerk must give notice of the municipality's intent to process absentee ballots prior to election day using a notice of early processing form provided by the Secretary of State, stating the days and times that the clerk intends to begin processing absentee ballots and the inspection period provided in subsection 3. At least 60 days before election day, the clerk shall provide a copy of the notice of early processing to the Secretary of State and the chairs of each political party of the municipality indicating that early processing of absentee ballots will occur. The notice to the political parties must be considered sufficient as long as it is mailed to the last address of each municipal chair that is known to the clerk. The notice to the Secretary of State may be delivered by mail or facsimile or as a scanned attachment to an e-mail address established by the Secretary of State. If the notice is not received by the Secretary of State by 5:00 p.m. on the 60th day before election day, the municipality may not process absentee ballots prior to election day. The clerk shall post a copy of the notice of early processing with the notice of election as provided in section 621-A.

3. Inspection of absentee envelopes before processing. A member of the public may make a written request of the clerk to inspect absentee ballot applications and envelopes before they are processed if the request is made by 9:00 a.m. on each day that the clerk will process absentee ballots as specified on the notice of early processing under subsection 2. The clerk shall make the absentee ballot applications and envelopes received by that time available for public inspection for one hour before the starting time specified in the notice of early processing for processing the absentee ballots. The clerk may immediately proceed to process the ballots after the one-hour inspection time has elapsed.

4. Processing and other procedures. The clerk shall use the procedure described in this section when processing the absentee ballots during the designated times. Procedures for handling full ballot boxes, pollwatching and challenging ballots are conducted in the same manner as election day or as close as practicable.

5. Counting and results prohibited before the polls close. The absentee ballots may not be counted, voter intent may not be determined and election results may not be obtained or released until after the polls have closed on election day and all election day ballots have been cast and all absentee ballots have been processed. A municipality that uses a high-speed ballot tabulator and receives results at the completion of the ballot scanning may not view the results until after the polls close on election day.

6. Security of processed ballots and tabulating equipment. At the conclusion of absentee ballot processing on any day prior to election day, the clerk shall ensure that the early processed absentee ballots are locked and sealed in the ballot box, automatic tabulating equipment ballot box or tamper-proof containers provided by the Secretary of State and secured in a vault or other locked secure location, until the voting resumes on election day or until the ballots are counted after the polls close. The Secretary of State shall publish uniform guidelines for securing ballots and other materials under this subsection.

LD1363
VLA

PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 2/13/12

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)		
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)		
C. Whether federal law requires the record to be confidential		
Does the proposed exception meet one or more of the following (D, E, F, G or I)		
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure		
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records		
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records		
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records		
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception		
H. Whether the proposed exception is as narrowly tailored as possible		
<i>If the proposed exception creates broad confidentiality for an entity: 2-A. Accountability review of agency or official.</i> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		