MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION-1999

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S.P. 631 In Senate, March 9, 1999

An Act to Improve the Absentee Voting Process.

Submitted by the Secretary of State pursuant to Joint Rule 204.
Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator DAGGETT of Kennebec.
Cosponsored by Representative TUTTLE of Sanford.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §751, as amended by PL 1997, c. 436, §105, is repealed and the following enacted in its place:

§751. Proper at any election

Absentee ballots may be cast at any election by any voter who requests an absentee ballot as provided under this subchapter. The voter need not specify a reason to receive an absentee ballot.

Sec. 2. 21-A MRSA §753, as amended by PL 1997, c. 436, §§107 to 111, is repealed.

Sec. 3. 21-A MRSA §§753-A and 753-B are enacted to read:

§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.

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, either by mail, in person or by facsimile. The voter may designate an immediate family member or another 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.

4. **Request by telephone.** A voter may make a telephone request for the voter's own ballot. In this case, the voter may not designate an immediate family member or another 3rd person to deliver the ballot on the voter's behalf. The clerk shall ask the voter for the information required on the application and complete the application, with the exception of the voter's signature, and shall write "telephone request" on the application. The clerk shall verify that it is the voter who is

requesting the ballot by making the voter confirm the voter's residence and birth date on the voting list.

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.

§753-B. Procedure for issuing absentee ballot

1. Application or written request received. Upon receipt of a completed application or a written request for an absentee ballot signed by the voter or an immediate family member, 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 other 3rd person designated in a written application or request made by the voter. Upon completion of a telephone request, the clerk shall issue an absentee ballot by mail or in person to the voter, at the address requested by the voter. The clerk shall type or write in ink the name and the legal address of the voter in the designated section of the return envelope.

2. Restrictions on issuing ballot. The clerk may not deliver an absentee ballot to any 3rd person who is a candidate or a member of a candidate's immediate family. The clerk may not deliver to an immediate family member or other 3rd person any absentee ballot requested by telephone. The clerk may not issue more than 5 absentee ballots to any 3rd person designated in applications or written requests at any time.

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 the date that 3rd person was notified by the clerk that the ballot was available or by the close of the polls on election day, whichever is earlier.

4. Duplicate application. If the clerk receives a duplicate application or request from a person from whom the clerk has received a return envelope apparently containing a statewide absentee ballot, the clerk may not furnish another statewide absentee ballot for that person. The clerk may issue a 2nd statewide absentee ballot to an applicant if the applicant requests one in person or in writing and:

A. The applicant states good cause, including, but not
limited to, loss of, spoiling of or damage to the first
absentee ballot; or

          B. An absentee ballot for the applicant that was furnished
to a designated 3rd person is not returned to the clerk's
office within the time limits provided in subsection 3. If
a ballot for an applicant is not returned to the clerk
within 2 days of notification, the clerk shall mail or hand
deliver a ballot to that applicant on the 3rd day after
notification and may not issue another ballot to the
applicant except for good cause as provided in this
subsection. This paragraph does not affect the time for
delivery of absentee ballots under section 755.

          5. Alternate method of balloting by residents of certain
licensed facilities. The municipal clerk shall designate one or
more times during the 30-day period prior to an election during
which the municipal clerk shall be present in any licensed
nursing home, as defined in Title 22, chapter 405; licensed
residential care facility, as defined in Title 22, chapter 1665;
or certified congregate housing unit, as defined in Title 22,
chapter 1665, 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. Sections 681 and 682 apply to
voting in these facilities within the areas designated by the
clerk.

          6. Clerk to list. The clerk shall keep a list, by
district, of the persons furnished absentee ballots until after
election day, including the persons who vote in the presence of
the clerk under subsection 8. The clerk shall submit this list
to the registrar for certification before the close of business
on the day before election day.

The clerk shall keep a list of the 3rd persons designated in
applications or written requests to whom absentee ballots are
sent or delivered under subsection 2 and of the number of
absentee ballots sent or delivered to them.

          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. 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 ballot issue is prohibited within the clerk's office and on public property within 250 feet of the entrance to the clerk's office.

A. 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 clerk's office.

B. 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 drivers 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.

Sec. 4. 21-A MRSA §754-A, as amended by PL 1997, c. 436, §112, is further amended to read:

§754-A. Method of voting

Except as provided in section 7̶5̶3̶ 753-B, subsection 7̶ 8, the method of voting by absentee ballot is as follows.

1. Ballot delivered to voter or immediate family member. When a voter, or an immediate family member of a voter, obtains a ballot from the clerk in person or by mail and returns that ballot to the clerk in person or by mail and receives no assistance in marking the ballot, the following procedures apply.

2   A. The voter shall mark that ballot according to section
     691 or 692 so that it is impossible for anyone present at
     the time to see how the voter voted.

4
     B. While the voter is marking the ballot, there may be no
6   communication between the voter and any other individual as
     to the person or question for which the voter is to vote.

8
     C. After the voter has completed marking the ballot, the
10   voter shall then seal the ballot in its return envelope and
     complete the affidavit on the envelope. No notary or
12   witness certification is required.

14   D. The voter, or an immediate family member of the voter,
     shall then complete-the-address-on-the-envelope-and mail it
16   or deliver it in person the sealed envelope containing the
     voted ballot to the clerk of the municipality of which the
18   voter is a resident. The voter shall send a completed voter
     registration or absentee ballot application, if necessary,
20   in a separate envelope.

22   E. If an immediate family member of the voter returns an
     absentee ballot that was requested by the voter or another
24   immediate family member of the voter, in writing or in
     person, the clerk shall accept the ballot. The clerk shall
26   have the immediate family member who returned the ballot
     sign the application or written request, and indicate that
28   the ballot was returned by that person.

30   2. Ballot delivered by 3rd person or returned by 3rd
     person. When a ballot is delivered to the voter by a person
32   other than the clerk, or an immediate family member of the voter,
     or is returned to the clerk by a person other than the voter, the
34   clerk or an immediate family member of the voter, and the voter
     receives no assistance in marking his the ballot, the following
36   procedures apply.

38   A. The voter must mark his the ballot in the presence of
     the following witness or witnesses: One notary public,
40   clerk of a municipality, clerk of courts or 2 other
     individuals. The voter, before marking his the ballot, must
42   show it to the witness or witnesses who must examine it to
     be certain it is unmarked.

44
     B. While the voter is marking the ballot, there may be no
46   communication between the voter and any other individual as
     to the person or question for which the voter is to vote.

48
     C. The voter must mark his the ballot according to section
50   691 or 692 so that it is impossible for anyone present at

the time to see how he the voter voted. The voter must then
2   seal the ballot in its return envelope and complete the
     affidavit on the envelope in the presence of the witness or
4   witnesses, who shall sign the witness certification.

6   D. The voter must then complete the address on the envelope
     and mail or deliver it personally or by agent the 3rd person
8   who was designated in the application to the clerk of the
     municipality of which he the voter is a resident. He The
10   voter must send a completed voter registration or absentee
     ballot application, if necessary, in a separate envelope.

12

     3. Assistance in reading or marking ballot. A voter who is
14   unable to read or mark his the ballot because of his the voter's
     physical disability, illiteracy, or religious faith must vote
16   according to the procedures in this subsection instead of the
     procedures in subsection 1 or 2.

18

     A. A voter who needs assistance may request another person,
20   other than the voter's employer or agent of that employer or
     officer or agent of the voter's union, to assist the voter
22   in reading or marking the ballot.

24   B. The voter or the aide must mark the ballot in the
     presence of one of the following witnesses: Notary public,
26   clerk of a municipality, clerk of courts or another
     individual.

28

     C. The voter or the aide, before marking the ballot, must
30   show it to the witness who must examine it to be certain it
     is unmarked.

32

     D. While the voter or the aide is marking the ballot, there
34   may be no communication between the voter and any
     individual, other than the aide who must mark the ballot as
36   the voter indicates, as to the person or question for which
     the voter is to vote.

38

     E. The voter or the aide must mark the ballot according to
40   section 691 or 692 so that it is impossible for anyone else
     present to see how the voter voted, then seal the ballot in
42   its return envelope. The voter, or the aide at the voter's
     request, shall complete and sign the affidavit in the
44   presence of the witness, who shall sign the witness
     certification. The aide must complete and sign the
46   certification for aides on the outside of the envelope.

48   F. The voter or the aide must then complete the address on
     the envelope and mail or deliver it personally or by agent
50   the 3rd person who was designated in the application to the

clerk of the municipality of which the voter is a resident.
2   The voter must send a completed <u>voter registration or</u>
<u>absentee ballot</u> application, if necessary, in a separate
4   envelope.

6   **Sec. 5. 21-A MRSA §756, sub-§2, ¶A,** as amended by PL 1985, c.
357, §§13 and 19, is further amended to read:

8

A. If the signatures do not appear to have been made by the
10   same person, but this discrepancy is apparently the result
of the voter's having properly obtained assistance under
12   either section ~~753~~ <u>753-A,</u> subsection-4-<u>5,</u> or section 754-A,
subsection 3, or both, then the clerk shall note the
14   discrepancy on the return envelope, but shall also write
"OK" and ~~his~~ <u>the clerk's</u> initials on the return envelope.

16

    Sec. 6. 21-A MRSA §759, sub-§3, ¶A, as amended by PL 1985, c.
18   357, §§17 and 19, is further amended to read:

20   A. The signatures do not appear to have been made by the
same person and the discrepancy is not the result of the
22   voter's having obtained assistance under section ~~753~~ <u>753-A,</u>
subsection-~~4~~-<u>5</u> or section 754-A, subsection 3, in cases
24   where an application is required;

26   **Sec. 7. 21-A MRSA §759, sub-§8,** as amended by PL 1997, c. 436,
§114, is repealed and the following enacted in its place:

28

    <u>**8. Inspection of absentee envelopes before processing.** If</u>
30   <u>a candidate or the candidate's representative notifies the clerk</u>
<u>before 5 p.m. on the day before election day that the candidate</u>
32   <u>or the candidate's representative wishes to inspect absentee</u>
<u>ballot applications and envelopes before they are processed, the</u>
34   <u>warden or clerk shall allow the candidate or representative to</u>
<u>inspect the applications and envelopes of ballots before they are</u>
36   <u>processed or for 30 minutes after the time specified in the</u>
<u>notice for processing on election day. The warden may</u>
38   <u>immediately proceed to process the ballots after the candidate or</u>
<u>representative has completed the review.</u>

40

<u>If the municipality processes absentee ballots only after the</u>
42   <u>polls close on election day, then the candidate or the</u>
<u>candidate's representative must notify the warden by 5 p.m. on</u>
44   <u>election day that the candidate or the candidate's representative</u>
<u>wishes to inspect absentee ballot applications and envelopes</u>
46   <u>after the polls close. The warden shall allow the candidate or</u>
<u>representative to inspect the applications and envelopes for 30</u>
48   <u>minutes after the polls close. The warden may immediately</u>
<u>proceed to process the ballots after the candidate or</u>
50   <u>representative has completed the review.</u>

2   **Sec. 8. 21-A MRSA §791, sub-§1, ¶B,** as amended by PL 1985, c.
357, §§18 and 19, is further amended to read:

4

       B.   A municipal clerk who, when a person has voted by

6   absentee ballot in the clerk's presence under section ~~753~~
       753-B, subsection ~~7~~ 8, signs ~~his~~ the clerk's name to an

8   affidavit on the absentee ballot return envelope when the
       affidavit is not properly completed; or

10

12   **SUMMARY**

14   This bill allows any voter to vote by absentee ballot at any
       election, and removes the current provision stating reasons for

16   permitting a person to vote by absentee ballot. This bill also
       clarifies the procedures for requesting and issuing an absentee

18   ballot. The bill further refines the procedure for a candidate
       or a candidate's representative to inspect absentee ballot

20   applications and envelopes on election day before the ballots are
       processed.