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## OLR Bill Analysis

### SB 901

#### ***AN ACT EXTENDING TO JUNE 30, 2021, CHANGES IMPLEMENTED FOR THE 2020 STATE ELECTION AS A RESULT OF COVID-19.***

#### **SUMMARY**

This bill extends to June 30, 2021, certain changes affecting absentee voting eligibility and procedures implemented for the 2020 state election as a result of COVID-19. Generally, for a state or municipal election, primary, or referendum occurring before July 1, 2021, the bill does the following:

1. expands the reasons for which electors may vote by absentee ballot to include the COVID-19 sickness (§ 1);
2. gives the secretary of the state broad authority to change absentee voting forms and materials to conform to the expanded eligibility (§ 3);
3. authorizes town clerks to mail absentee voting sets using a third-party vendor that the secretary of the state approves and selects (§ 4);
4. requires town clerks to designate secure drop boxes and allows voters to deposit absentee ballots in them (§ 5);
5. allows town clerks to deliver sorted and checked absentee ballots to registrars of voters before election day to begin certain pre-counting procedures (§ 6);
6. authorizes municipalities to conduct certain absentee ballot pre-counting procedures, provided they comply with specified procedural requirements, such as notifying the secretary, and do not open the inner-envelope or count the ballot before the day of the election, primary, or referendum (§§ 7-12);

7. authorizes the secretary of the state, subject to certain conditions, to waive requirements under the mandatory supervised absentee voting law (§ 13);
8. moves up the deadline by which an elector who has returned a completed absentee ballot but later finds he or she is able to vote in person must go to the town clerk's office to request that the ballot be withdrawn (§ 14);
9. extends the timeframe for opening absentee ballot depository envelopes if there is a recanvass (§ 15); and
10. extends, generally by 48 hours, numerous deadlines and timeframes associated with processing absentee ballots and canvassing and reporting the returns (§§ 16-20).

The bill also makes technical and conforming changes.

EFFECTIVE DATE: Upon passage

### **§§ 1-3 — EXPANDED ABSENTEE VOTING AUTHORIZATION AND UPDATED FORMS**

For a state or municipal election, primary, or referendum occurring before July 1, 2021 (hereafter, "covered election, primary, or referendum"), the bill expands the reasons for which electors may vote by absentee ballot to include the COVID-19 sickness (see BACKGROUND). Under the bill, "COVID-19" means the respiratory disease designated as "coronavirus 2019" by the World Health Organization (WHO) on February 11, 2020, and any related mutation of it that the WHO recognizes as a communicable respiratory disease.

The bill requires that absentee ballots be updated for a covered election, primary, or referendum by inserting on the inner envelope's statement, "the sickness of COVID-19" as a reason for which electors may vote absentee. As with other types of absentee voters, those who vote by absentee ballot due to the COVID-19 sickness must sign the ballot under penalties of false statement in absentee balloting. By law, false statement in absentee balloting is a class D felony, punishable by

up to five years in prison, up to a \$5,000 fine, or both (CGS § 9-359a).

The bill also gives the secretary of the state broad authority to make changes to absentee voting forms and materials for a covered election, primary, or referendum when, in her opinion, changes are necessary to conform to law. The authorization applies to prescribed absentee voting forms and printed, recorded, or electronic materials.

#### **§ 4 — DELIVERY OF ABSENTEE BALLOTS TO VOTERS**

The bill, with certain exceptions, authorizes town clerks to mail absentee voting sets for a covered election, primary, or referendum using a third-party vendor that the secretary of the state approves and selects. It also requires (1) town clerks to mail the absentee voting sets within 48 hours, rather than within 24 hours, after receiving an application and (2) that any contract between the secretary and a third-party vendor require the vendor to mail each set within 72 hours after receiving the application from the clerk.

The bill's provisions on mailing absentee ballot sets do not apply when a referendum is held with fewer than three weeks' notice since, by law, town clerks may provide absentee ballots for these referenda only to people who apply in person (CGS § 9-369c(a)).

#### **§ 5 — RETURN OF ABSENTEE BALLOTS BY VOTERS**

By law, voters may return completed absentee ballots via mail (e.g., the U.S. Postal Service) or in-person at the town clerk's office. Under the bill, for a covered state or municipal election, primary, or referendum, they may also deposit them in secure drop boxes designated by their town clerk for that purpose. Town clerks must designate the drop boxes following instructions that the secretary of the state prescribes.

Beginning 29 days before a covered election, primary, or referendum, and each weekday thereafter until the polls close, town clerks must retrieve absentee ballots from the secure drop boxes. (Presumably, for primaries and referenda, the requirement applies only after town clerks begin issuing absentee ballot sets (see

BACKGROUND).) A police officer must escort the town clerk in retrieving absentee ballots from any drop box located outside of a building other than the clerk's office building.

## **§ 6 — DELIVERY OF RETURNED ABSENTEE BALLOTS TO REGISTRARS**

As discussed below, for a covered election, primary, or referendum, the bill moves up the timeframe for absentee ballot sorting and checking procedures so that registrars of voters may begin certain pre-counting procedures.

By law, town clerks must sort any absentee ballots received by the day before an election, primary, or referendum into voting districts, and they may begin doing so seven days prior. For a covered election, primary, or referendum, the bill authorizes clerks to begin sorting ballots 14 days prior.

For ballots received by 11:00 a.m. on the day before an election, primary, or referendum, the law requires registrars of voters to check the names of applicants returning absentee ballots on the official registry list with "A" or "Absentee." This sorting and checking must be completed by the day before, and the clerk must deliver the sorted and checked ballots to the registrars on the day of the election, primary, or referendum. For a covered election, primary, or referendum, the bill requires the town clerk to deliver these ballots at 6:00 a.m. unless a later time is mutually agreed upon.

The bill allows town clerks to deliver sorted and checked ballots to the registrars before the day of a covered election, primary, or referendum to begin certain pre-counting procedures (see below). Specifically, it allows any ballots received, sorted, and checked by 5:00 p.m. on the fourth day before the election, primary, or referendum to be delivered to the registrars at that time. It similarly allows ballots received, sorted, and checked by 5:00 p.m. on the third and second days before the election, primary, or referendum to be delivered to the registrars at those times.

In each case, the bill allows the clerk to deliver the ballots at a later

time that he or she mutually agrees upon with the registrars. The bill also requires the (1) clerk to include with the ballots an up-to-date copy of the duplicate checklist and (2) clerk and registrars to execute an affidavit of delivery and receipt stating the number of ballots delivered. Existing law applies these requirements to ballots delivered on the day of an election, primary, or referendum.

### **§ 7 — REQUIREMENTS FOR OPTING IN TO PRE-COUNTING**

Under the bill, any municipality opting to conduct pre-counting procedures for a covered election, primary, or referendum, must do so at a central location. The registrars of voters must designate the location in writing to their respective town clerks at least 10 days before the election, primary, or referendum, and the location must be published in the warning for the election, primary, or referendum (see below).

If a municipality opts to use the pre-counting procedures, the bill requires the registrars of voters and town clerk to jointly certify this decision to the secretary of the state, in writing, at least 10 days before the election, primary, or referendum. The certification must include the (1) name, street address, and relevant contact information for the designated central location and (2) name and address of each absentee ballot counter.

The secretary must approve or disapprove the certification within two days after receiving it. The bill also allows her to require the municipality to appoint one or more additional absentee ballot counters.

By law, municipalities must count absentee ballots at a central location unless the registrars of voters agree to count them in each polling place. The bill specifies that any ballots delivered to the registrars on the day of a covered election, primary, or referendum (i.e., those not delivered for pre-counting procedures) may still be counted in the polling places.

### **§§ 8-11 — NOTIFYING THE PUBLIC OF COVERED ELECTIONS AND PRIMARIES**

By law, the town clerk must notify the municipality's electors of a state or municipal election or primary by publishing the warning in a newspaper. The bill generally delays the period during which municipalities must publish these warnings, as shown below in Table 1.

**Table 1: Notice Requirements**

| <b>Bill §</b> | <b>Requirement</b>                                                                                                                                                                                           | <b>Deadline or Timeframe Under Current Law</b>                                                                                                                                                                                                                                                 | <b>Deadline or Timeframe Under the Bill</b>            |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|
| § 8           | Town clerk or assistant town clerk must notify electors of a <u>vacancy election</u> for member of Congress, probate judge, or state legislator by publishing the warning in a general circulation newspaper | From five to 15 days before the election                                                                                                                                                                                                                                                       | From four to seven days before the election            |
| § 9           | Town clerk or assistant town clerk must notify electors of a <u>municipal election</u> by publishing the warning in a general circulation newspaper                                                          | From five to 15 days before the election                                                                                                                                                                                                                                                       | From four to seven days before the election            |
| § 10          | Town clerk must notify electors of a <u>primary for state or district office</u> by publishing the warning in a general circulation newspaper                                                                | <ul style="list-style-type: none"> <li>• 14 days after the close of the convention for major party candidates who receive at least 15% of a roll call vote at the convention</li> <li>• 63 days before the election for major party candidates who petition onto the primary ballot</li> </ul> | From four to seven days before the primary             |
| § 11          | Town clerk must notify electors of a <u>primary for municipal office, or for election as town committee member</u> , by publishing the warning in a general circulation                                      | <ul style="list-style-type: none"> <li>• 34 days before the primary for municipal offices voted on at a</li> </ul>                                                                                                                                                                             | From four to seven days before the election or primary |

|  |           |                                                                                                                                                                                                   |  |
|--|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
|  | newspaper | municipal election, or for election as town committee member<br><ul style="list-style-type: none"> <li>• 63 days before the primary for municipal offices voted on at a state election</li> </ul> |  |
|--|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

**§ 12 — AUTHORIZED PRE-COUNTING PROCEDURES**

By law, absentee ballot sets consist of an outer envelope, which contains information about the elector (e.g., name and address), and an inner envelope, which contains the elector's marked ballot and a statement signed by the elector under penalty of false statement in absentee balloting. (By law, false statement in absentee balloting is a class D felony.)

The law sets out numerous absentee ballot counting steps, which are generally completed by absentee ballot counters or moderators. It requires that each of these steps be completed beginning on election day.

For municipalities that opt to use pre-counting procedures, the bill authorizes them to complete the following steps, beginning at 5:00 p.m. on the fourth day before the covered election, primary, or referendum:

1. remove the inner envelopes from the outer envelopes;
2. report to the moderator separately the total number of absentee ballots received; and
3. reject ballots for which the inner envelope statement is improperly executed.

Under the bill, once the above steps are completed, the absentee

ballots must be counted beginning on the election, primary, or referendum day in accordance with existing law.

***Securing the Absentee Ballots Until Election Day***

The bill requires that absentee ballots be secured throughout any pre-counting process. Specifically, the ballots must be secured according to (1) instructions from the secretary of the state and (2) existing statutory requirements on securing absentee ballots and related materials. Under the bill, the secretary must issue these instructions at least 10 days before the covered election, primary, or referendum.

**§ 13 — MANDATORY SUPERVISED ABSENTEE VOTING**

The bill authorizes the secretary of the state to waive any requirements under the mandatory supervised absentee voting law for a covered election or primary (see BACKGROUND). To waive a requirement, she must do so in recognition of the governor’s March 10, 2020, declaration of public health and civil preparedness emergencies. Before any waiver, the secretary must do the following:

1. consult with the public health commissioner, or the commissioner’s designee;
2. give written notice to the town clerk and registrars of voters in each affected municipality; and
3. submit a report to the Government Administration and Elections Committee, advising of the waiver and specifying alternative actions that will be taken to provide any affected electors with absentee voting opportunities.

**§ 14 — DEADLINE FOR WITHDRAWING A SUBMITTED ABSENTEE BALLOT**

By law, electors who submit an absentee ballot must go to the town clerk’s office and request to withdraw it if they later find they can vote in person. For a covered election, primary, or referendum, the bill moves up this deadline from 10:00 a.m. on the election, primary, or referendum day to 5:00 p.m. on the fourth day before it, which is the



same time that municipalities may begin pre-counting procedures.

## **§§ 15-20 — EXTENSION OF CERTAIN DEADLINES & TIMEFRAMES**

The bill extends, generally by 48 hours, numerous deadlines and timeframes associated with processing absentee ballots and canvassing and reporting returns for a covered election, primary, or referendum (see CGS §§ 9-369c(f) and 9-381a). The changes also generally apply to a referendum held in conjunction with a covered election.

The table below lists, in chronological order, the deadlines and timeframes under current law and the bill.

**Table 2: Changes to the 2021 Election Calendar**

| <b>Bill §</b> | <b>Requirement</b>                                                                                                                                                                                          | <b>Deadline or Timeframe Under Current Law</b>                                                                                                                                                              | <b>Deadline or Timeframe Under the Bill</b>                                                                                                                                                                |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| § 17          | After submitting the preliminary list of returns, moderator completes the canvass, which includes announcing (1) each candidate's name and absentee vote count and (2) the results for any ballot questions | 48 hours after the polls close                                                                                                                                                                              | 96 hours after the polls close                                                                                                                                                                             |
| § 19          | Moderator submits to the secretary of the state the duplicate list of returns (1) by electronic means and (2) in sealed, hard copy                                                                          | <ul style="list-style-type: none"> <li>• 48 hours after the polls close for the electronic submission</li> <li>• Three days after the election, primary, or referendum for the sealed, hard copy</li> </ul> | <ul style="list-style-type: none"> <li>• 96 hours after the polls close for the electronic submission</li> <li>• Five days after the election, primary, or referendum for the sealed, hard copy</li> </ul> |
| § 16          | Moderator deposits certificate (from the official checkers) with town clerk indicating the total number of names on the official checklist and the number checked as having voted                           | 48 hours after the polls close                                                                                                                                                                              | 96 hours after the polls close                                                                                                                                                                             |
| § 16          | Registrars deposit signed registry                                                                                                                                                                          | 48 hours after the                                                                                                                                                                                          | 96 hours after the                                                                                                                                                                                         |

|      |                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                   |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | list with town clerk                                                                                                                                                                                                                                                                                    | polls close                                                                                                                                                                                                                                       | polls close                                                                                                                                                                                                                                       |
| § 20 | Registrars provide town clerk with results of votes cast                                                                                                                                                                                                                                                | 48 hours after the polls close                                                                                                                                                                                                                    | 96 hours after the polls close                                                                                                                                                                                                                    |
| § 20 | For municipalities divided into voting districts, the (1) head moderators, town clerk, and registrars meet to identify any errors in the election or primary night returns and (2) moderators correct any errors and file an amended return with the secretary of the state, town clerk, and registrars | <ul style="list-style-type: none"> <li>• 9:00 a.m. on the third day after the election, primary, or referendum for the meeting</li> <li>• 1:00 p.m. on the third day after the election, primary, or referendum for any amended return</li> </ul> | <ul style="list-style-type: none"> <li>• 9:00 a.m. on the fifth day after the election, primary, or referendum for the meeting</li> <li>• 1:00 p.m. on the fifth day after the election, primary, or referendum for any amended return</li> </ul> |
| § 18 | If there appears to be a discrepancy in any voting district's returns, the head moderator calls for a recanvass                                                                                                                                                                                         | Three days after the election or primary                                                                                                                                                                                                          | Five days after the election or primary                                                                                                                                                                                                           |
| § 18 | When a recanvass is required due to a discrepancy, tie vote, close vote, including a close vote referendum, the recanvass officials meet to recanvass the returns (CGS §§ 9-311a, -311b, & -370a)                                                                                                       | Five business days after the election, primary, or referendum                                                                                                                                                                                     | Seven business days after the election, primary, or referendum                                                                                                                                                                                    |
| § 15 | In the event of a recanvass, absentee ballot depository envelopes may be unsealed by court order or State Elections Enforcement Commission subpoena                                                                                                                                                     | Five business days after the election, primary, or referendum                                                                                                                                                                                     | Seven business days after the election primary, or referendum                                                                                                                                                                                     |
| § 18 | If a discrepancy, close vote, or tie vote recanvass results in a correction to the original returns, the moderator files one copy of the corrected recanvass return with the secretary of the state and another with the town clerk                                                                     | 10 days after the election, primary, or referendum                                                                                                                                                                                                | 12 days after the election, primary, or referendum                                                                                                                                                                                                |

## BACKGROUND

### ***Permitted Reasons for Voting by Absentee Ballot***

The state constitution authorizes the General Assembly to pass a law allowing eligible voters to cast their votes by absentee ballot if they are unable to appear at a polling place on election day because of (1) absence from their city or town, (2) sickness or physical disability, or (3) the tenets of their religion prohibit secular activity (Art. VI, § 7). The General Assembly exercised this authority and passed laws codified at CGS § 9-135.

CGS § 9-135 permits eligible voters to vote by absentee ballot if:

1. they are absent from the municipality in which they reside during all hours of voting;
2. they are ill or have a physical disability;
3. the tenets of their religion forbid secular activity on the day of the primary, election, or referendum;
4. they are in active service in the U.S. Armed Forces; or
5. their duties as a primary, election, or referendum official outside of their voting district will keep them away during all hours of voting.

### ***Issuing Absentee Ballot Sets***

By law, town clerks begin issuing absentee voting sets 31 days before an election and 21 days before a primary, or if that day falls on a weekend or holiday, the next preceding business day. Generally, clerks begin issuing the sets 19 days before a referendum or when an elector applies for an absentee ballot, whichever is later. However, when a referendum is held with fewer than three weeks' notice, clerks must make the sets available no later than four business days after the question is finalized (CGS §§ 9-140(f) and 9-369c(a) & (e)).

### ***Mandatory Supervised Absentee Voting***

Under the mandatory supervised absentee voting law, registrars of voters or their designees must supervise absentee voting at

“institutions” (e.g., nursing homes and other residential care and mental health facilities) in which at least 20 patients are registered voters (including patients who are registered in a municipality other than the one where the institution is located). During these voting sessions, registrars or their designees deliver absentee ballots to the institution and jointly supervise voters while they fill out the ballots. Voters have the right to complete their ballots in secret, but registrars observe the process and are available to assist upon request.

**COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable

Yea 13 Nay 6 (03/05/2021)