

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1957 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES

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THE MICHIE COMPANY  
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**Sec. 46. Vacancies, how filled.**—In case any duly nominated candidate, except a candidate for United States senate, governor or representative to congress, shall die before the day of the election at which such office is to be filled, or shall withdraw in writing, or shall forfeit his nomination by failure to accept or to file a return, as provided in sections 34 and 35, then the vacancy may be supplied by the regularly elected county, city, town, plantation or representative class committee as the case may be of the political party of such nominee. In case a vacancy occurs in any office except that of United States senator, governor or representative to congress which is to be filled at the next biennial state election for which no nomination has been made at the primary election held on the 3rd Monday in June of the same year, nominations shall be made as provided in this section. When such a vacancy occurs, the governor shall, by proclamation, declare such fact and fix a date and place for the meeting of the appropriate committees. Certificates for supplying the vacancy and the manner of placing the name of the nominee upon the ballots shall conform to the provisions of section 56. (R. S. c. 4, § 45. 1949, c. 300. 1955, c. 47, § 4.)

**Effect of amendment.**—The 1955 amendment inserted the words “and place” in the next to the last sentence.

#### **Nomination of Candidates Not Included in the Primary.**

**Sec. 54. Filing of certificates of nomination and nomination papers.**—Petitions filed in accordance with section 52 for the nomination of candidates for United States senate, representatives to congress, state and county officers and representatives to the legislature shall be filed with the secretary of state on or before the 10th day of July of each year in which a biennial election is held, and for candidates for electors of president and vice-president on or before the 10th day of September in each year when a presidential election is held. Such certificates and papers for the nomination of candidates for the office of mayor and all other offices in cities shall be filed with the city clerks of the respective cities at least 14 days, exclusive of Sundays, previous to the day of election. Such certificates and papers for the nomination of candidates to be voted for at any special election to be held for choice of United States senators, representatives to congress or members of the legislature shall be filed with the secretary of state at least 14 days, exclusive of Sundays, previous to the day of election. Whenever state, county, city or town committees are required by law to nominate candidates for public office, a certificate as provided in section 57 shall be filed with the secretary of state at least 5 days following such nomination. With nomination papers and certificates shall also be filed the consent in writing of the person nominated. (R. S. c. 4, § 55. 1953, c. 365, § 14. 1955, c. 47, § 5.)

**Effect of amendment.**—The 1955 amendment inserted the next to the last sentence.

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## **Chapter 5.**

### **Elections. Congressional Districts. Presidential Electors.**

Section 65-A. Indian Island Voting District.  
 Section 65-B. Peter Dana Point Voting District.  
 Section 65-C. Pleasant Point Voting District.

#### **Preparation and Distribution of Ballots.**

##### **Sec. 1. Terms defined.**

Cited in Opinion of the Justices, 152  
 Me. 212.

**Sec. 2. Specimen ballots of nominations transmitted to clerks 7 days before any election, and published.**—The secretary of state shall, 7 days at least previous to the day of any state election, transmit to the clerk in each city, town and plantation in which such election is to be held, specimen ballots containing the names, residences and party or political appellations of all candidates nominated as provided in chapter 4 for such election and to be voted for at each voting place in each such city, town and plantation respectively, substantially in the form of the general ballot to be so used therein; and the clerks shall immediately cause the specimen ballots for each ward, town or plantation as the case may be, to be conspicuously posted in one or more public places in such ward, town or plantation. The secretary of state shall likewise cause to be published prior to the day of any such election, in at least 2 newspapers, if there be so many printed or published in each county, representing so far as practicable, the political parties which, at the preceding election, cast the largest and next largest numbers of votes, a specimen ballot of all such nominations, so far as may be, in the form in which they shall appear upon the general ballots. Monthly newspapers may be used for this purpose when authorized by the governor and council. Such specimen ballot may be published in the English language in a foreign language newspaper. New nominations made or authorized shall be transmitted, posted and published promptly, and so far as practicable in the manner herein directed, and communications transmitted as herein directed by the secretary of state to any clerk shall be duplicated on the succeeding day. (R. S. c. 5, § 2. 1951, c. 348, § 6. 1955, c. 397. 1957, c. 318, § 1.)

**Effect of amendments.** — The 1955 amendment inserted the fourth sentence. The 1957 amendment inserted the third sentence.

### Notifying Meetings and Proceedings. Ballot Boxes.

**Sec. 17. Officers presiding have powers of moderator.**—The selectmen or other officers, required by the constitution and laws to preside at any meeting called under the provisions of section 16, shall have all the powers of moderators of town meetings, as provided in chapter 90-A. They shall refuse the vote of any person not qualified to vote. (R. S. c. 5, § 17. 1957, c. 405, § 3.)

**Effect of amendment.** — The 1957 amendment made this section into two sentences and substituted “section 16” for “the preceding section” and “chapter 90-A” for “chapter 91.”

**Sec. 25. Clerks to preserve check lists, and furnish certified copies thereof.**—Clerks of towns shall preserve the check lists used at any election for 1 year without alteration, and shall furnish to any person a certified copy thereof within 20 days after demand and payment or tender of the legal charges therefor, which shall be 75¢ per 100 names or part thereof, and shall without charge furnish the governor and council with a certified copy thereof within 20 days after demand, under the penalty provided in section 96. (R. S. c. 5, § 25. 1955, c. 204, § 1. 1957, c. 310.)

**Effect of amendments.** — The 1955 amendment deleted the words “at which the ballots cast are to be returned to the secretary of state under the provisions of this chapter” after the word “election” in line two. The 1957 amendment inserted the phrase “which shall be 75¢ per 100 names or part thereof.”

### Manner of Voting and Returns.

#### Sec. 39. Ballots, how counted.

Such indorsement shall be signed by the ward, town or plantation clerk and by the wardens in cities or voting precincts, or by a majority of the selectmen of towns and of the assessors of plantations. The ballots and signed statements of officials returned to the city clerk after any city election and all other ballots returned to him shall be preserved by him as a public record for 3 months. The pro-

visions of this section shall apply to all elections, including primary elections and elections for determining initiated and referendum questions. (R. S. c. 5, § 39. 1953, c. 365, § 17. 1955, c. 204, § 2.)

**Effect of amendment.**—The 1955 amendment deleted the words “check list” after the word “ballots” in line three of the last paragraph and substituted “3” for “6”

in line five of the last paragraph. As the rest of the section was not changed by the amendment, only the last paragraph is set out.

**Sec. 43. Secretary of state to send messenger for returns or ballots; expense of messenger, how paid.**—At the expiration of 14 days after any election specified in the preceding section, the secretary of state shall forthwith send a messenger to every town from which returns of votes have not been received, as provided in the preceding section, and the expense of each messenger shall be audited and paid as provided in section 79. (R. S. c. 5, § 44. 1953, c. 365, § 18. 1955, c. 30, § 1.)

**Effect of amendment.**—The 1955 amendment deleted the words “and added to the

next state tax assessed on the town,” formerly appearing at the end of the section.

**Sec. 50. Mode of determining who are elected; proceedings for correcting returns; notice of election; rule for canvassing returns and determining election.**

**Governor and council cannot decide whether ballots shall be counted or rejected.**—The governor and the executive council do not have the power and the authority to decide whether any ballots cast in an election for representative to the congress of the United States shall be counted or rejected. Opinion of the Justices, 152 Me. 212.

The governor and council in the case of an election for representative to congress by statute are given no power to do more than examine and correct the returns. To decide whether ballots cast in the election should be counted or rejected would be action on their part unauthorized by law. Opinion of the Justices, 152 Me. 212.

**Sec. 51. Result of any election by ballot, how determined.**

**Certificate should be issued to apparent winner.**—Although the governor and the executive council are in doubt as to the legality of certain ballots cast in an election for representatives to congress and are without authority to decide whether

such ballots should be counted or rejected, a certificate should be issued under this section to the apparent winner under a tabulation of returns. Opinion of the Justices, 152 Me. 212.

### Indian Island Voting District.

**Sec. 65-A. Voting place, procedure, registration commissioner.**—A voting district comprising all of the Penobscot tribal reservation situate on Indian Island, so called, within the limits of the city of Old Town in the county of Penobscot is hereby created. Such voting area shall be known as Indian Island Voting District. The secretary of state shall prepare and provide sufficient ballots containing such designation for use at all state, county and national elections, including primary elections. The commissioner of health and welfare shall provide a suitable building for use as a voting place for all elections and equip it with a voting compartment and guard rail in accordance with the provisions of section 15.

The governor, with the advice and consent of the council, shall appoint some suitable person to the office of registration commissioner of Indian Island voters hereinafter referred to as registration commissioner. He shall serve for a term of 2 years and shall receive a salary of \$20 for each day or part thereof while engaged in the actual performance of his duties. The registration commissioner shall determine the constitutional qualifications of residents of the Indian Island Voting District who desire to vote in accordance with this section. If he finds the applicant qualifies as an Indian in accordance with the provisions of section

321 of chapter 25 and if he has been a resident of Indian Island for 3 months and if he meets the educational and other requirements of section 1 of article II of the Maine constitution, he shall permit him to register as a voter and enroll as a member of any political party.

The registration commissioner shall be in session at the voting place or in some other convenient location on Indian Island on the Monday preceding each election from 2 o'clock to 5 o'clock and from 7 o'clock to 9 o'clock in the afternoon for the purpose of registering and enrolling Indian voters. Such registration and enrollment may also take place on the day of election.

The registration commissioner shall act as warden and ward clerk and shall have the powers of a moderator in the conduct of the election. Two election clerks who, if available and qualified, shall be Indian residents of Indian Island representing the 2 political parties polling the highest and next highest vote for governor at the preceding gubernatorial election and shall be selected from candidates nominated by the chairman of the respective Penobscot county political committees. The compensation of the election clerks shall be \$10 per diem.

Notice of all elections to be held in the Indian Island Voting District shall be given by a warrant signed by the registration commissioner and posted by him in at least 2 conspicuous public places on Indian Island. Such warrant shall be posted at least 7 days before any election and a copy thereof with his doings thereon shall be filed by the registration commissioner in the office of the secretary of state before the day of the election for which such warrant is issued. The registration and enrollment of voters and the conduct of the elections shall be in accordance with the provisions of chapters 3 to 9, inclusive, insofar as they do not conflict with the provisions of sections 65-A to 65-C, inclusive.

After the votes have been sorted, counted and preserved according to law, the return of said votes shall be filled out and signed by the election clerks and attested by the registration commissioner and mailed or delivered promptly by him into the office of the secretary of state.

After each election, the registration commissioner shall prepare a payroll listing moneys due him and the election clerks and submit same to the commissioner of health and welfare and the same shall be paid from funds appropriated by the state for support of the Indian tribes.

In case the registration commissioner resigns, dies or is unable to serve, the governor shall appoint a successor to fill the unexpired term in the same manner as the original appointment unless the time is insufficient, in which case the governor shall make an emergency appointment of some suitable person to act as registration commissioner until the vacancy can be filled. (1955, c. 190. 1957, c. 157, § 1.)

**Effect of amendment.** — The 1957 amendment rewrote this section.

### **Peter Dana Point Voting District.**

**Sec. 65-B. Voting place, procedure, registration commissioner.**—A voting district comprising all of the Passamaquoddy tribal reservation situate on Indian Township, so called, in the county of Washington is hereby created. Such voting area shall be known as Peter Dana Point Voting District. The secretary of state shall prepare and provide sufficient ballots containing such designation for use at all state, county and national elections, including primary elections. The commissioner of health and welfare shall provide a suitable building for use as a voting place for all elections and equip it with a voting compartment and guard rail in accordance with the provisions of section 15.

The governor, with the advice and consent of the council, shall appoint some suitable person to the office of registration commissioner of Peter Dana Point voters hereinafter referred to as registration commissioner. He shall serve for

a term of 2 years and shall receive a salary of \$20 for each day or part thereof while engaged in the actual performance of his duties. The registration commissioner shall determine the constitutional qualifications of residents of the Peter Dana Point Voting District who desire to vote in accordance with this section. If he finds the applicant qualifies as an Indian in accordance with the provisions of section 321 of chapter 25 and if he has been a resident of Peter Dana Point for 3 months and if he meets the educational and other requirements of section 1 of article II of the Maine constitution, he shall permit him to register as a voter and enroll as a member of any political party.

The registration commissioner shall be in session at the voting place or in some other convenient location on Peter Dana Point on the Monday preceding each election from 2 o'clock to 5 o'clock and from 7 o'clock to 9 o'clock in the afternoon for the purpose of registering and enrolling Indian voters. Such registration and enrollment may also take place on the day of election.

The registration commissioner shall act as warden and ward clerk and shall have the powers of a moderator in the conduct of the election. Two election clerks who, if available and qualified, shall be Indian residents of Peter Dana Point representing the 2 political parties polling the highest and next highest vote for governor at the preceding gubernatorial election and shall be selected from candidates nominated by the chairman of the respective Washington county political committees. The compensation of the election clerks shall be \$10 per diem.

Notice of all elections to be held in the Peter Dana Point Voting District shall be given by a warrant signed by the registration commissioner and posted by him in at least 2 conspicuous public places on Peter Dana Point. Such warrant shall be posted at least 7 days before any election and a copy thereof with his doings thereon shall be filed by the registration commissioner in the office of the secretary of state before the day of the election for which such warrant is issued. The registration and enrollment of voters and the conduct of the elections shall be in accordance with the provisions of chapters 3 to 9, inclusive, insofar as they do not conflict with the provisions of sections 65-A to 65-C, inclusive.

After the votes have been sorted, counted and preserved according to law, the return of said votes shall be filled out and signed by the election clerks and attested by the registration commissioner and mailed or delivered promptly by him into the office of the secretary of state.

After each election, the registration commissioner shall prepare a payroll listing moneys due him and the election clerks and submit same to the commissioner of health and welfare and the same shall be paid from funds appropriated by the state for support of the Indian tribes.

In case the registration commissioner resigns, dies or is unable to serve, the governor shall appoint a successor to fill the unexpired term in the same manner as the original appointment unless the time is insufficient, in which case the governor shall make an emergency appointment of some suitable person to act as registration commissioner until the vacancy can be filled. (1957, c. 157, § 2.)

### **Pleasant Point Voting District.**

**Sec. 65-C. Voting place, procedure, registration commissioner.**—A voting district comprising all of the Passamaquoddy tribal reservation situate on Pleasant Point, so called, in the county of Washington is hereby created. Such voting area shall be known as Pleasant Point Voting District. The secretary of state shall prepare and provide sufficient ballots containing such designation for use at all state, county and national elections, including primary elections. The commissioner of health and welfare shall provide a suitable building for use as a voting place for all elections and equip it with a voting compartment and guard rail in accordance with the provisions of section 15.

The governor, with the advice and consent of the council, shall appoint some suitable person to the office of registration commissioner of Pleasant Point voters hereinafter referred to as registration commissioner. He shall serve for a term of 2 years and shall receive a salary of \$20 for each day or part thereof while engaged in the actual performance of his duties. The registration commissioner shall determine the constitutional qualifications of residents of the Pleasant Point Voting District who desire to vote in accordance with this section. If he finds the applicant qualifies as an Indian in accordance with the provisions of section 321 of chapter 25 and if he has been a resident of Pleasant Point for 3 months and if he meets the educational and other requirements of section 1 of article II of the Maine constitution, he shall permit him to register as a voter and enroll as a member of any political party.

The registration commissioner shall be in session at the voting place or in some other convenient location on Pleasant Point on the Monday preceding each election from 2 o'clock to 5 o'clock and from 7 o'clock to 9 o'clock in the afternoon for the purpose of registering and enrolling Indian voters. Such registration and enrollment may also take place on the day of election.

The registration commissioner shall act as warden and ward clerk and shall have the powers of a moderator in the conduct of the election. Two election clerks who, if available and qualified, shall be Indian residents of Pleasant Point representing the 2 political parties polling the highest and next highest vote for governor at the preceding gubernatorial election and shall be selected from candidates nominated by the chairman of the respective Washington county political committees. The compensation of the election clerks shall be \$10 per diem.

Notice of all elections to be held in the Pleasant Point Voting District shall be given by a warrant signed by the registration commissioner and posted by him in at least 2 conspicuous public places on Pleasant Point. Such warrant shall be posted at least 7 days before any election and a copy thereof with his doings thereon shall be filed by the registration commissioner in the office of the secretary of state before the day of the election for which such warrant is issued. The registration and enrollment of voters and the conduct of the elections shall be in accordance with the provisions of chapters 3 to 9, inclusive, insofar as they do not conflict with the provisions of sections 65-A to 65-C, inclusive.

After the votes have been sorted, counted and preserved according to law, the return of said votes shall be filled out and signed by the election clerks and attested by the registration commissioner and mailed or delivered promptly by him into the office of the secretary of state.

After each election, the registration commissioner shall prepare a payroll listing moneys due him and the election clerks and submit same to the commissioner of health and welfare and the same shall be paid from funds appropriated by the state for support of the Indian tribes.

In case the registration commissioner resigns, dies or is unable to serve, the governor shall appoint a successor to fill the unexpired term in the same manner as the original appointment unless the time is insufficient, in which case the governor shall make an emergency appointment of some suitable person to act as registration commissioner until the vacancy can be filled. (1957, c. 157, § 3.)

#### **Choice of Electors of President and Vice-President.**

**Sec. 78. Votes, how received, returned and counted; secretary to send for delinquent returns; notice to persons elected.**—The votes shall be sorted, counted, declared and recorded; and the returns of the number of ballots and of the votes given for each candidate shall be made, according to the constitution and laws, to the secretary of state, on or before the 2nd Tuesday after such meeting; on said 2nd Tuesday, the governor and council shall be in session, and shall open, examine and count the returns of votes so made, and the secretary

of state shall forthwith send a messenger to every city and town from which a return has not been received at his office for the purpose of procuring the wanting return and the governor and council shall again meet not later than the 1st day of December following such election, and examine and count all the votes received from the several cities, towns and plantations and the votes of citizens in the military service lawfully returned into the office of the secretary of state; and they shall forthwith send a certificate of election to each person who has received the greatest number of all the votes returned, not exceeding the number to be chosen. (1955, c. 47, § 6.)

**Effect of amendment.**—The 1955 amendment substituted “not later than the 1st day of December” for “on the 3rd Tuesday” near the middle of the first para-

graph. As only the first paragraph was changed by the amendment, the rest of the section is not set out.

**Sec. 79. Expense of sending for returns to be paid by state.**—The expense of each messenger sent as required by the preceding section shall be audited and allowed by the governor and council, and paid out of the state treasury; but if the same messenger is sent to two or more towns on the same route, the amount to be paid by each of them shall be apportioned by the governor and council according to their relative distances and the expense of traveling. If the governor and council determine that the officers of any delinquent town have not fully performed their duties in making the required returns, the amount so paid shall be repaid the state by such town. Such town shall be precluded from drawing from the state treasury any funds set apart for such town so long as such amount remains unpaid. (R. S. c. 5, § 80. 1955, c. 30, § 2.)

**Effect of amendment.**—The 1955 amendment deleted, in the first sentence, a provision for adding the expense of sending

for returns to the state tax of the delinquent town, and added the second and third sentences.

**Sec. 81. Duties of governor; meetings of electors; vacancies.**—As soon as practicable after the electors are chosen, the governor shall communicate by registered mail under the seal of the state to the administrator of general services of the United States a certificate of the ascertainment of the electors, setting forth the names of the electors, and the number of votes given for each person voted for; and the governor shall deliver to the electors, on or before the 1st Monday after the 2nd Wednesday of December next after their election, 6 original duplicates of the same certificate under the seal of the state. If there shall have been any contest concerning the choice of any electors, or in case of a choice under the provisions of the preceding section, the governor, after such determination, shall communicate under the seal of the state to the administrator of general services of the United States a certificate of such determination in form and manner as the same shall have been made. The electors shall convene in the senate chamber at Augusta on the 1st Monday after the 2nd Wednesday of December next after their election, at 2 o'clock in the afternoon; and if any elector so chosen is not present, the electors then present, by a majority of votes, shall forthwith elect a qualified person to supply such deficiency. (R. S. c. 5, § 82. 1955, c. 47, § 7.)

**Effect of amendment.**—The 1955 amendment substituted “administrator of general

services” for “secretary of state” in the first and second sentences.

### **Sec. 82. Proceedings of presidential electors.**

**III.** On the day thereafter they shall forward by registered mail two of such certificates and lists to the administrator of general services of the United States at the seat of government. (1955, c. 47, § 8.)

**Effect of amendment.**—The 1955 amendment substituted “administrator of general services” for “secretary of state” in sub-

section III. As the rest of the section was not changed by the amendment, only subsection III is set out.

**Contested Elections.**

**Sec. 84. Claimant of county or municipal office to proceed as in equity.**

Applied in *Miller v. Hutchinson*, 150 Me. 279, 110 A. (2d) 577.

**Chapter 6.****Absent Voting. Physical Incapacity Voting.**

The right to vote in absentia by absentee ballot is statutory and one who exercises such statutory rights must comply substantially with the provisions of the statute. *Miller v. Hutchinson*, 150 Me. 279, 110 A. (2d) 577.

**What provisions directory.**—The provisions of this chapter touching the procedure to be employed at the polls and the disposition of applications and envelopes following an election are directory and not mandatory in nature. Distinction was made between acts of the voter and

acts of the election officials. The voter must comply with the statute insofar as his acts are concerned. Opinion of the Justices, 152 Me. 219, 130 A. (2d) 526.

**Validity of ballots where election officials fail to carry out duties.**—As to whether absentee voters' ballots are invalidated by the failure of election officials to carry out their duties strictly in accordance with this chapter in stated categories, see Opinion of the Justices, 152 Me. 219, 130 A. (2d) 526.

**Sec. 2. Secretary of state to prepare ballots, blank forms, instructions, etc., for city and town clerks.**

**Requirements mandatory.**—This section directs the city clerk to prepare an absentee voting ballot, a blank form of application for such ballot and envelopes of sufficient size to contain the ballot. Among other requirements the aforesaid envelopes are to bear on the reverse side the required affidavit prescribed by subsection IV. These statutory requirements are mandatory. *Miller v. Hutchinson*, 150 Me. 279, 110 A. (2d) 577.

The oath required by this section is mandatory and failure of the voter to make or take such an oath, administered by a qualified official, is fatal and invali-

dates the vote so cast. *Miller v. Hutchinson*, 150 Me. 279, 110 A. (2d) 577; Opinion of the Justices, 152 Me. 219, 130 A. (2d) 526.

**Certificate on envelope held insufficient.**—A certificate on the envelope of an absentee ballot that "the above statements made by said affiant are true to the best of my knowledge and belief" does not constitute a compliance with this section, which requires a jurat that the voter "personally appeared \* \* \* and made oath to the truth of the statement contained hereon." *Miller v. Hutchinson*, 150 Me. 279, 110 A. (2d) 577.

**Sec. 6. Procedure in cities.**—When a written request for an absent voting ballot or physical incapacity voting ballot is received by the clerk of a city, he shall forthwith mail or deliver the application and ballot to the applicant; provided, however, that if the request is made on the form prescribed by subsections II and III of section 2, then he shall mail or deliver only the ballot. If the applicant requests in writing that the ballot be delivered to a third person, the city clerk shall comply with said request. Before the closing of the polls on election day, the clerk shall deliver to the officials charged by law with the registration and enrollment of voters in such city all applications for absent voting and physical incapacity voting ballots which have been received by him. Such officials shall examine each application and, if they believe the signature thereon to be genuine and the statements therein made to be true, they shall execute the certificate thereon and return it to the clerk. If the officials do not believe the signature to be genuine or the statements made by the applicant to be true, and so decline to execute the certificate, they shall forthwith mail to the applicant at his address as stated on his application written notice to that effect, giving their reasons for so declining and informing him that his ballot will not be counted. They