

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1450

S. P. 555

In Senate, March 8, 1967

Referred to Committee on State Government. Sent down for concurrence and ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Lund of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT Establishing a State Board of Election Recounts.

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

Sec. 1. R. S., T. 21, §§ 1123-1124, additional. Title 21 of the Revised Statutes is amended by adding 2 new sections to read as follows:

§ 1123. Candidate's inspection of ballot and checklist

On the written application of a candidate within 5 days after election day, the clerk shall permit him or his counsel to inspect the ballots and checklists under proper protective regulations.

1. Notice of inspection. On receipt of the applications, the clerk shall send written notice of the inspection to the candidates for the office in question, stating the time and place of inspection.

2. Time of inspection. The inspection must be held as soon as reasonably possible at such a time and place as to afford the candidates a reasonable opportunity to be present.

3. Packages resealed and marked. After the inspection, the clerk shall re-seal the packages of ballots and the checklists, and shall note the fact and date of inspection on them.

§ 1124. Referendum ballots

Any resident of the municipality affected may inspect referendum ballots, have them recounted and appeal those disputed to the Governor and Council as provided in sections 1123, 1165 and 1166. Instead of the notice requirements of those sections, the person to whom the application is directed shall publish a

notice of the details of the inspection, recount or hearing on appeal in a newspaper having general circulation in the municipalities concerned, at least 3 days prior to it.

Sec. 2. R. S., T. 21, c. 27, sub-c. III, repealed and replaced. Subchapter III of chapter 27, of Title 21 of the Revised Statutes is repealed and the following enacted in place thereof:

SUBCHAPTER III

STATE BOARD OF ELECTION RECOUNTS

§ 1161. Composition of board

There shall be established, independent of every other department and agency of this State, a Board of Election Recounts, hereinafter in this subchapter called the board, consisting of 4 qualified electors of this State, of outstanding honesty and ability, 2 of whom shall be Republicans and 2 of whom shall be Democrats, and none of whom shall hold any other public office or public employment, but no person shall be disqualified solely because he is a notary public, who shall be appointed by the Governor with the approval of the Council, as hereinafter provided.

§ 1162. Appointment or election of members

The Governor shall from a list of not less than 10 persons submitted to him by the chairman of the State Committee of the party from which the appointment is to be made, appoint some person whose name appears on said list to succeed the member of the board whose term shall next expire. The board shall, upon the appointment of any new member, meet and elect one of its members to be chairman. In the month of March in every year in which the term of a member of the board expires, the Governor shall appoint, in accordance with the above provisions, some Republican or Democrat as the case may be, to succeed the member whose term shall next expire to hold office for 4 years and until his successor shall be appointed and qualified.

§ 1163. Filling of vacancies

Any vacancy in the office of a member of the state board shall be filled by the Governor for the remainder of an unexpired term from a list of 10 persons submitted by the chairman of the State Committee of the political party from which said appointment is to be made.

§ 1164. Oath of members; compensation

Before entering upon his duties each member of said board shall take an oath of office before the Supreme Court in which he shall swear or affirm faithfully and impartially to administer the duties of his office without regard to partisan or political considerations. Each member of said board shall receive an annual salary in such amount as shall be provided by law.

§ 1165. Powers and duties; recounts

On the written application of a losing candidate in any election not later than 10 days after the tabulation of the vote is submitted to the Governor and

Council, the board shall permit him or his counsel to recount the ballots under proper protective regulations, subject to the following provisions:

1. Vote shows proper percentage of difference. The percentage of difference between the combined vote received by the losing candidate and the nearest winning candidate, as shown by the official tabulation must meet the following requirements:

A. If the combined vote is 1,000, or less, the percentage of difference between the vote must be 10%, or less, of the total vote.

B. If the combined vote is 1,001 to 5,000, the percentage of difference between the vote must be 5%, or less, of the total vote.

C. If the combined vote is 5,001 to 10,000, the percentage of difference between the vote must be 4%, or less, of the total vote.

D. If the combined vote is 10,001 to 50,000, the percentage of difference between the vote must be 3%, or less, of the total vote.

E. If the combined vote is 50,001 to 100,000, the percentage of difference between the vote must be 1%, or less, of the total vote.

F. If the combined vote is 100,001, or over, the percentage of difference between the vote must be $\frac{1}{2}$ of 1%, or less, of the total vote.

2. Recount on deposit. A losing candidate may request a recount upon making a deposit with the board in the following amounts:

A. If the combined vote is 1,000 or less, and the percentage of difference between the vote for the 2 candidates is more than 10%, \$50.

B. If the combined vote is 1,001 to 5,000, and the percentage of difference between the vote for the 2 candidates is more than 5%, \$75.

C. If the combined vote is 5,001 to 10,000, and the percentage of difference between the vote for the 2 candidates is more than 4%, \$100.

D. If the combined vote is 10,001 to 50,000, and the percentage of difference between the vote for the 2 candidates is more than 3%, \$125.

E. If the combined vote is 50,001 to 100,000, and the percentage of difference between the vote for the 2 candidates is more than 1%, \$250.

F. If the combined vote is 100,001, or over, and the percentage of difference between the vote for the 2 candidates is more than $\frac{1}{2}$ of 1%, \$500.

The deposit made by the candidate requesting the recount shall be forfeited to the State in the event that the recount fails to change the result of the election. If the recount reverses the election, the deposit shall be returned to the candidate requesting the recount.

3. Ballots and check lists recalled. On receipt of the application, the board shall recall all the ballots and check lists from the clerk of each municipality concerned. The clerk shall return or release them to the board as soon as any pending ballot inspection has been made.

4. Notice of recount. The board shall send written notice of the recount to the candidates for the office in question, stating the time and place of the recount.

5. Time of recount. The recount must be held as soon as reasonable opportunity to be present.

6. Disputed ballots segregated. At the recount, the board shall segregate any disputed ballots.

7. Mistake in ballot count. If it is found that there was a mistake made in counting the ballots on election day the board shall submit a corrected tabulation to the Governor and Council.

8. Appeal to Governor and Council. If there are enough disputed ballots to affect the result of the election, the interested candidate may appeal to the Governor and Council for a determination of the election on written application to the board at the close of the recount.

A. Exception. This subsection does not apply where final determination of the election of a candidate is governed by the State or Federal Constitution.

9. Package resealed and marked. After the recount, the board shall reseat the packages of ballots and the check lists, and shall note the fact and date of the recount on them. If there is an appeal to determine the validity of the disputed ballots, the board shall keep them until needed by the Governor and Council.

10. Withdrawal from recount. A losing candidate who requests and receives a recount may withdraw from the recount at any time while the recount shows him to be the loser. If during the recount, the losing candidate shall overtake and pass the winning candidate, the losing candidate shall not be permitted to withdraw and the recount shall be completed.

11. Hold hearings. Hold hearings relating to recounts or other protests of the results or conduct of an election resulting in a recount.

12. Maintain books and records. Maintain such books and records of the recount, and publish such statements and reports thereof as it may deem to be in the public interest.

13. Rules and regulations. The board shall have power to make such rules, regulations, directives and procedures as it deems necessary to carry out the objects and purposes of this subchapter not inconsistent with law. The board shall also have jurisdiction over all recount matters on appeal from the local board and over such other matters pertinent and necessary to the proper supervision of the election recount laws.

§ 1166. Appeal to Governor and Council

On the written application of a candidate as provided in section 1165, the Governor and Council shall hold a hearing on the appeal.

1. Notice of appeal. On receipt of the application, the board shall send written notice of the appeal to the candidates for the office in question, stating the time and place of the hearing on the appeal.

2. Time of appeal. The hearing on the appeal must be held as soon as reasonably possible at such a time and place as to afford the candidates a reasonable opportunity to be present.

3. Determination. At the hearing, the Governor and Council shall examine the disputed ballots, hear the arguments of each candidate or his counsel and determine who was elected. In making this determination, they may accept as facts any relevant conclusions agreed upon by the nominees.

§ 1167. Quorum; vote required to act

Three members of the board shall constitute a quorum, but the board shall take no action unless the same is authorized by at least one Democratic and at least one Republican member of said board.

§ 1168. Secretary and assistants; salaries

The board is authorized to appoint a secretary and necessary assistants who shall perform such duties as said board shall designate. The board shall fix the salaries of such secretary and assistants within the amount appropriated therefor and the Legislature shall annually appropriate such sum or sums as it deems necessary for the payment of the salaries of the members of said board, its appointees and assistants and for other necessary expenses in connection therewith; and the Treasurer of State is authorized and directed to draw his orders upon the State Controller for the payment of such sum or so much thereof as may be required from time to time upon the receipt by him of proper vouchers approved by 2 members of the board. The members of the board, its secretary, assistants and appointees, shall not be subject to the provisions of the state merit system act.

§ 1169. Seal of board

The board shall have a seal, and shall cause the same to be affixed to all certificates and statements issued by it.

§ 1170. Hearings and investigations; subpoena powers; false swearing

Each member of the board shall be authorized to administer oaths, and said board, in all cases of every nature pending before it, is authorized and empowered to summon witnesses by subpoena signed by the secretary of the board and to compel such witnesses to attend and testify in the same manner as witnesses are compelled to appear and testify in any court. The board is authorized to compel by its subpoena attested by its secretary, the production of all papers, books, documents, records, certificates or other legal evidence that may be necessary or proper for the determination and decision of any question or the discharge of any duty required by law of said board, and every person disobeying any such subpoena shall be considered as in contempt, and the board may punish any contempt of its authority in like manner as contempt may be punished by any court. Any person who shall willfully swear falsely in any proceeding, matter or hearing before the board shall be deemed guilty of the crime of perjury.