

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 188

S. P. 66

In Senate, January 16, 1969

Referred to Committee on Election Laws. Sent down for concurrence and ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Berry of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Relating to Recount and Other Election Procedures and Changing the Primary Election Date.

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

Sec. 1. R. S., T. 5, § 85, amended. Section 85 of Title 5 of the Revised Statutes is amended to read as follows :

§ 85. Distribution of blanks for election returns; penalty for neglect

The Secretary of State shall cause blanks for all election returns required by law to be seasonably distributed to the clerks of the several towns, by mail. If any clerk fails to receive such blanks by ~~the 20th day of October in any year in which an election is held~~ 7 days prior to an election, of which returns are to be made to the office of the Secretary of State, he shall forthwith notify the Secretary of State. If the Secretary of State neglects this duty he forfeits \$100 for each neglect.

Sec. 2. R. S., T. 21, § 445, sub-§ 9, amended. Subsection 9 of section 445 of Title 21 of the Revised Statutes is amended to read as follows :

9. When filed. It must be filed with the Secretary of State on or before ~~April~~ July 1st of the election year in which it is to be used.

Sec. 3. R. S., T. 21, § 448, amended. Section 448 of Title 21 of the Revised Statutes is amended to read as follows :

§ 448. Time of election

The primary election shall be held on the ~~3rd Monday of June~~ 2nd Tuesday after Labor Day of each general election year.

Sec. 4. R. S., T. 21, § 492, sub-§ 10, amended. Subsection 10 of section 492 of Title 21 of the Revised Statutes is amended to read as follows:

10. When filed. It must be filed with the Secretary of State on or before ~~August 15th~~ **July 1st** of the election year in which it is to be used.

Sec. 5. R. S., T. 21, § 1092, amended. The first sentence of section 1092 of Title 21 of the Revised Statutes is amended to read as follows:

Within 20 days after an election, the Secretary of State shall tabulate the election returns ~~and submit the tabulation to the Governor and Council.~~

Sec. 6. R. S., T. 21, § 1094, amended. Section 1094 of Title 21 of the Revised Statutes is amended to read as follows:

§ 1094. Review by Secretary of State

The ~~Governor and Council~~ **Secretary of State** shall review the tabulation of the vote ~~hear appeals~~ and determine the result of referendum questions and the persons to whom the Governor shall issue certificates of election or notices of apparent election, except where the final determination as to their election depends on the Federal or State Constitution.

Sec. 7. R. S., T. 21, § 1095, amended. The first sentence of section 1095 of Title 21 of the Revised Statutes is amended to read as follows:

Within a reasonable time after an election, the Governor shall issue an election certificate in accordance with Title 5, section 84 or a notice of apparent election to each person elected to office according to the tabulation required by section 1092, or on appeal ~~according to the determination of the Governor and Council~~ as provided by law.

Sec. 8. R. S., T. 21, § 1151, repealed. Section 1151 of Title 21 of the Revised Statutes is repealed.

Sec. 9. R. S., T. 21, § 1152, repealed and replaced. Section 1152 of Title 21 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 1152. Recount

The Secretary of State, on receipt by him not later than 3 days after election day of a written application of a losing candidate in any election, shall order the ballots cast for the particular office sought by such candidate to be recounted. Any such recount shall be conducted under such regulations as the Secretary of State shall prescribe, and shall be 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 votes 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 Secretary of State 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. Application. The application shall contain the applicant's name and address, and the name of the office for which the applicant is a candidate. It shall also include a specific statement of the reasons of the candidate for requesting the recount.

4. Notice; time and place. On receipt of a valid application, the Secretary of State shall forthwith send written notice of the recount to the candidates for the office in question and to the clerk of each municipality concerned. On receipt of such notice, the clerk of each municipality concerned shall forthwith send written notice of the proposed recount to the candidates for the office in question, stating the time and location or locations of the recount in the municipality. Prior to the commencement of the recount, the clerk shall establish proper procedures for the conduct of the recount under his supervision, but such procedures shall not be in conflict with any rules prescribed by

the Secretary of State. In the event that the recount is held in more than one location within a municipality, the clerk shall appoint recount officials to supervise the recounting in each location and to otherwise act as his representative. Such recount officials shall include a supervising official at each recount location. All expenses incurred in the employment of recount officials shall be borne by the municipality concerned. All recounts shall commence no later than 7 days after election day, except when more than one recount has been ordered in a municipality, in which case the first shall be commenced within 7 days and any other immediately thereafter in an order determined by the Secretary of State. The clerk shall retain all ballots and checklists until the completion of all recounts affecting the municipality of which he is clerk.

5. Presence of candidate or agents. Each candidate for the office concerned may be present at any recount location and may witness such recount at each table where a recount of the ballots affecting such candidate is being held, and he may be accompanied by counsel. Each such candidate may also be represented by agents, appointed by him or his counsel in writing, sufficient in number to provide no more than one such agent, in addition to the candidate and his counsel, at each recount location. Each such candidate, counsel and agent shall have the right to observe and inspect the ballots, tally sheets, and all other papers used in the recount, and to watch every individual act performed in connection therewith.

6. Disputed ballots segregated; rulings. The clerk shall cause all ballots disputed at the recount to be segregated, and he shall rule on the validity of all such ballots prior to declaring the recount terminated, subject to appeal as provided by law. In the event that the recount is held at more than one location within a municipality, the supervising recount official at each location shall rule on such ballots and the rulings of such official shall be subject to the same right of appeal as those of the clerk. In either event, at the termination of the recount, the clerk shall report in writing the number of disputed ballots to the Secretary of State. Such disputed ballots shall be held in the custody of the clerk until they are requested by the Secretary of State or any other proper authority.

7. Error in ballot count. If it is found after final determination of all disputed ballots that there was a numerical error made in counting the ballots on election day, the clerk of each municipality concerned shall submit a duplicate copy of a corrected return, signed by him, to the Secretary of State, and shall forthwith record the original return. The Secretary of State, upon receiving the corrected returns from all municipalities concerned with the recount, shall forthwith tabulate the returns as provided in section 1092.

8. Packages resealed and marked. After the recount, the clerk shall reseat the packages of ballots except those that are disputed, and the checklists, and shall note the fact and date of the recount on them.

9. Appeal. If there are a sufficient number of disputed ballots to affect the result of the election, the interested candidate may appeal by filing a notice of appeal in the office of the clerk of courts for any county within 48 hours after the recount has been declared completed by the last of the municipal clerks involved. Such notice shall state the reasons therefor. The clerk of

courts, upon receipt of such notice, shall forthwith notify in writing the Chief Justice of the Supreme Judicial Court, who shall appoint an associate justice of the Supreme Judicial Court to hear the appeal. The clerk of courts shall notify all candidates for the office concerned in writing of the time and place of the hearing on the appeal, which shall be held as soon as reasonably possible.

At the hearing, the court shall examine the disputed ballots, hear the arguments of each candidate or his counsel and any evidence necessary for its determination, and shall determine who was elected. In making this determination, the court may accept as facts any stipulations made by all the parties to the appeal.

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

10. **Withdrawal from recount.** A losing candidate who requests a recount may withdraw from the recount at any time, in which case the election day tabulation shall be forthwith acted upon by the clerk as if no recount had been requested.

11. **Exempt from Administrative Code.** The procedures in this section shall be exempt from Title 5, chapters 301 through 307.

Sec. 10. R. S., T. 21, § 1153, repealed. Section 1153 of Title 21 of the Revised Statutes is repealed.

Sec. 11. R. S., T. 21, § 1154, amended. Section 1154, of Title 21 of the Revised Statutes, as amended by section 14 of chapter 425 of the public laws of 1965, is further amended to read as follows:

§ 1154. Referendum ballots

Any resident of the municipality affected may ~~inspect~~ **have** referendum ballots ~~have them~~ recounted and appeal those disputed ~~to the Governor and Council~~ as provided in ~~sections 1151 to 1153~~ **section 1152**. Instead of the notice requirements of ~~those sections~~ **that section**, 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. 12. R. S., T. 21, § 1252, sub-§ 1, amended. Subsection 1 of section 1252 of Title 21 of the Revised Statutes is amended to read as follows:

1. **Absentee ballot.** An absentee ballot must be identical in all respects to the regular ballots used at an election, except that the words "Absentee Ballot" must be printed, **stamped or otherwise marked** conspicuously on both sides of the folded ballot, under regulations prescribed by the Secretary of State.