

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2233

S.P. 857 In Senate, February 10, 1988
Approved for Introduction by a Majority of the Legislative
Council pursuant to Joint Rule 26.
Reference to the Committee on Judiciary suggested and
ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator BRANNIGAN of Cumberland.
Cosponsored by Representative PARADIS of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

**AN ACT to Provide for Expedited Judicial
Review of Municipal Action or Inaction.**

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

6 Sec. 1. 30 MRSA §2051, sub-§4, as amended by PL
7 1981, c. 456, Pt. A, §102, is repealed and the
8 following enacted in its place:

1 4. Petition by voters, if selectmen refuse. On
2 the written petition of a number of voters equal to at
3 least 10% of the number of votes cast in the town at
4 the last gubernatorial election, but in no case fewer
5 than 10, the selectmen shall call a town meeting to
6 consider such matters as may be set forth in the
7 petition, but which shall not be repetitious of any
8 article considered at any town meeting within the
9 preceding year.

10 Sec. 2. 30 MRSA §2053, as amended by PL 1973,
11 c. 536, §5, is further amended to read:

12 §2053. Petition for article in warrant

13 On the written petition of a number of voters
14 equal to at least 10% of the number of votes cast in
15 the town at the last gubernatorial election, but in no
16 case ~~less~~ fewer than 10, the municipal officers
17 shall either insert a particular article, which shall
18 not be repetitious of any article considered at any
19 town meeting within the preceding year, in the next
20 warrant issued or shall within 60 days call a special
21 town meeting for its consideration.

22 Sec. 3. 30 MRSA §2061, sub-§4, as amended by PL
23 1973, c. 408, §§1 and 2, is further amended to read:

24 4. Referendum questions. By order of the
25 municipal officers or on the written petition of a
26 number of voters equal to at least 10% of the number
27 of votes cast in the town at the last gubernatorial
28 election, but in no case ~~less~~ fewer than 10, the
29 municipal officers shall require that a particular
30 article, which shall not be repetitious of any article
31 considered at any town meeting within the preceding
32 year, be placed in the next ballot printed, or shall
33 call a special town meeting for its consideration. A
34 public hearing shall be held by the municipal officers
35 on the subject of such article at least 10 days before
36 the day for voting thereon. Notice of such public
37 hearing shall be given by the municipal officers by
38 causing a copy of said proposed article together with
39 the time and place of hearing, to be posted in the
40 same manner required for posting a warrant for a town

1 meeting, at least 7 days before the date set for such
2 hearing, and a return shall be made on the original
3 notice by the municipal officers stating the manner of
4 notice and the time when it was given. The
5 requirement for public hearing shall not be a
6 prerequisite to the valid issuance of any bond, note
7 or other obligation of a municipality authorized to
8 borrow money by vote under any such particular
9 article. The petition or order for placing an article
10 on the ballot is subject to the same filing provisions
11 as are nomination papers under this section. A vote
12 by secret ballot takes precedence over a vote by any
13 other means at the same meeting. If by town meeting
14 vote or charter provision, a budget committee has been
15 established to review proposed town expenditures, the
16 recommendations of the budget committee shall be
17 printed instead of those of the municipal officers.

18 If a particular article to be voted on by secret
19 ballot requests an appropriation of money by the
20 municipality, the article when printed in the warrant
21 and on the ballot shall be accompanied by a
22 recommendation of the municipal officers and, if such
23 action affects the school budget, by the school board.

24 Sec. 4. 30 M RSA §§2068 and 2069 are enacted to
25 read:

26 §2068. Appeals of local referendum elections

27 1. Right of appeal. On written complaint of 10%
28 of the persons whose names were checked on the voting
29 list at any municipal referendum or ballot question
30 under section 1915 or 2061, and without the approval
31 of the Attorney General or any other public official,
32 an appeal on any issue of law or fact from a recount
33 hearing conducted under section 2064 pursuant to an
34 application made under section 2065 may be taken to
35 the Superior Court.

36 2. Procedure in Superior Court. The complaint
37 shall be filed and served upon the municipality within
38 5 days of the final determination of the recount
39 hearing. The municipality shall file a responsive

1 pleading within 5 days after service of the
2 complaint. As soon as practicable following the
3 filing of the responsive pleading, the court shall
4 hold a conference with parties to determine the future
5 course of the proceedings. If an evidentiary hearing
6 is required, the hearing shall be held no later than
7 30 days following the conference. The court shall
8 determine the issues presented to it de novo and as
9 expeditiously as possible.

10 3. Procedure in Supreme Judicial Court. Within 5
11 days after the entry of final judgment by the Superior
12 Court, the plaintiffs or the municipality may appeal
13 to the Supreme Judicial Court on questions of law
14 only. The procedure for the appeal shall be governed
15 by Title 21-A, section 745, subsection 2.

16 §2069. Appeals of local inaction on voter petitions

17 1. Right of appeal. On written complaint of a
18 number of voters equal to at least 10% of the number
19 of votes cast in a municipality at the last
20 gubernatorial election, but in no case fewer than 10,
21 and without the approval of the Attorney General or
22 any other public official, an appeal may be filed in
23 the Superior Court alleging that the municipal
24 officers have failed to act or have otherwise failed
25 to comply with the requirements of section 2051,
26 subsection 4, section 2053 or section 2061, subsection
27 4, following the filing of a written petition
28 contemplated by those provisions.

29 2. Procedure in Superior Court. The procedure in
30 the Superior Court shall be governed by section 2068,
31 subsection 2.

32 3. Procedure in Supreme Judicial Court. Within 5
33 days after the entry of final judgment by the Superior
34 Court, the plaintiffs or the municipality may appeal
35 to the Supreme Judicial Court on questions of law
36 only. The procedure for the appeal shall be governed
37 by Title 21-A, section 745, subsection 2.

1 STATEMENT OF FACT

2 The purpose of this bill is to provide a uniform
3 procedure whereby municipal voters who wish to
4 challenge the results of a municipal referendum
5 election or the failure of municipal officers to place
6 articles before the town meeting as required by law
7 may obtain expedited judicial review of such municipal
8 action or inaction. At present, the right to such
9 review if governed by several decisions of the Supreme
10 Judicial Court, most recently McCorkle v. Town of
11 Falmouth, 529 A.2d 337 (Me. 1987), referendum appeal,
12 and Buck v. Town of Yarmouth, 402 A.2d 860 (Me. 1979),
13 appeal of municipal failure to honor petition. These
14 decisions have left citizens and municipalities in a
15 state of uncertainty as to whether and in what manner
16 judicial appeals of municipal action on these subjects
17 may be filed.

18 This bill is intended to eliminate such
19 uncertainty by providing a simple procedure for such
20 appeals. In order to foreclose frivolous appeals, the
21 bill requires that an appeal may be taken only if
22 supported by at least 10% of the affected voters.
23 Moreover, in order to ensure that municipal projects
24 affected by referenda or voter petitions are not
25 unduly delayed, the bill provides for an expedited
26 judicial review procedure in the Superior Court, as
27 well as an expedited and limited right of appeal to
28 the Supreme Judicial Court. In this manner, the bill
29 balances the need to ensure that local government acts
30 lawfully with the need for local government to be able
31 to act without fear of frivolous or time-consuming
32 litigation.

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