

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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Legislative Document

No. 916

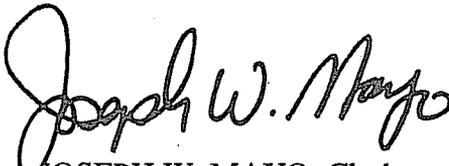
H.P. 678

House of Representatives, March 15, 1993

**An Act Implementing Comprehensive Election Reform.**

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Reference to the Committee on Legal Affairs suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative WHITCOMB of Waldo.  
Cosponsored by Representatives: BENNETT of Norway, OTT of York, STEVENS of Sabattus,  
Senator: CAREY of Kennebec.

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

2  
4       **Sec. 1. 21-A MRSA §112, sub-§1**, as enacted by PL 1985, c. 161,  
§6, is amended to read:

6       **1. Residence.** The residence of a person is that place in  
which ~~his~~ the person's habitation is fixed, ~~and to which,~~  
8 ~~whenever he is absent, he has the intention to return.~~

10       **Sec. 2. 21-A MRSA §606, sub-§4**, as enacted by PL 1985, c. 161,  
§6, is amended to read:

12       **4. Records kept.** The Secretary of State shall keep a  
14 record of the time when, the number and the manner in which the  
ballots were furnished to each voting place. The Secretary of  
16 State shall certify to the Governor on election day the number  
of ballots furnished to each municipality.

18       **Sec. 3. 21-A MRSA §681, sub-§1**, as enacted by PL 1985, c. 161,  
20 §6, is amended to read:

22       **1. Within the guardrail enclosure.** The clerk, election  
officials and not more than 2 voters in excess of the number of  
24 voting booths may be within the guardrail enclosure. The warden  
may permit peace officers to be within the enclosure to enforce  
26 the law. All Candidates, party workers, and all other persons  
must remain outside of the enclosure.

28       **Sec. 4. 21-A MRSA §681, sub-§4**, as enacted by PL 1985, c. 161,  
30 §6, is amended to read:

32       **4. Outside the guardrail enclosure.** Party Candidates,  
party workers and others may remain in the voting place outside  
34 the guardrail enclosure as long as they do not attempt to  
influence voters or interfere with their free passage. If any  
36 person attempts to influence voters or interfere with their free  
passage, the warden shall have ~~him~~ that person removed from the  
38 voting place. The influence of voters includes those activities  
in section 682.

40       **Sec. 5. 21-A MRSA §682, sub-§2**, as enacted by PL 1985, c. 161,  
42 §6, is amended to read:

44       **2. Influence prohibited.** Within the voting place, no  
person may influence or attempt to influence another person's  
46 choice of candidates. This limitation does not prohibit a  
candidate or a party worker from attending the voting place and  
48 orally communicating with voters, as long as he the candidate or  
party worker does not attempt to influence their vote.

50       **Sec. 6. 21-A MRSA §724, first ¶**, as enacted by PL 1985, c. 161,  
52 §6, is amended to read:



2 1. Notice of inspection. When the application is received,  
the clerk of the Supreme Judicial Court shall send written notice  
4 of the inspection to the candidates for the office in question,  
stating the time and place of inspection.

6 2. Ballots and incoming voting lists impounded. Upon  
receipt of an inspection request, the Chief Justice of the  
8 Supreme Judicial Court shall immediately direct the State Police  
to collect all the ballots and voting lists from the clerk of  
10 each municipality concerned.

12 3. Storage of ballots. The State Police shall place all  
election materials involved in an inspection request in a secure  
14 facility. In addition to storage, the State Police shall provide  
security throughout the entire inspection process.

16 4. When deposit is required. A deposit is not required if  
18 the difference between the total votes received by the candidate  
requesting the inspection and the total votes received by the  
20 nearest winning candidate, shown by the official tabulation is:

22 A. Ten percent or less if the combined vote for the 2  
24 candidates is 1,000 or less, otherwise a deposit of \$150 is  
required;

26 B. Five percent or less if the combined vote for the 2  
28 candidates is 1,001 to 5,000, otherwise a deposit of \$200 is  
required;

30 C. Four percent or less if the combined vote for the 2  
32 candidates is 5,001 to 10,000, otherwise a deposit of \$250  
is required;

34 D. Three percent or less if the combined vote for the 2  
36 candidates is 10,001 to 50,000, otherwise a deposit of \$300  
is required;

38 E. One percent or less if the combined vote received by the  
40 2 candidates is 50,001 to 100,000, otherwise a deposit of  
\$500 is required; or

42 F. One half of 1% or less if the combined vote received by  
44 the 2 candidates is 100,001 or over, otherwise a deposit of  
\$1,000 is required.

46 A deposit required by this section must be made with the clerk of  
48 the Supreme Judicial Court when the ballot inspection is  
50 requested. This deposit is forfeited to the court if the ballot  
52 inspection is begun and it fails to result in a recount that  
changes the result of the election. If a recount following the  
ballot inspection reverses the election, the deposit must be  
returned to the candidate requesting the ballot inspection.

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

6           6. Chief Justice to set procedures for inspection. The  
Chief Justice of the Supreme Judicial Court shall establish  
8 procedures for the inspection process.

10           7. Packages resealed and marked. After the inspection, the  
court shall reseal the packages of ballots and the incoming  
12 voting lists and shall note the fact and date of inspection on  
them.

14           **§748-A. Recount**

16           If a losing candidate in any election applies in writing  
18 within 10 days after the tabulation of the vote is submitted to  
the Governor, the Chief Justice of the Supreme Judicial Court  
20 shall permit the candidate or the candidate's counsel to recount  
the ballots under the provisions of this article.

22           **§748-B. Candidate costs for recounts**

24           1. When deposit is required. A deposit is not required if  
26 the difference between the total votes received by the candidate  
requesting a recount and the total votes received by the nearest  
28 winning candidate, shown by the official tabulation is:

30           A. Ten percent or less if the combined vote for the 2  
32 candidates is 1,000 or less, otherwise a deposit of \$150 is  
required;

34           B. Five percent or less if the combined vote for the 2  
36 candidates is 1,001 to 5,000, otherwise a deposit of \$200 is  
required;

38           C. Four percent or less if the combined vote for the 2  
40 candidates is 5,001 to 10,000, otherwise a deposit of \$250  
is required;

42           D. Three percent or less if the combined vote for the 2  
44 candidates is 10,001 to 50,000, otherwise a deposit of \$300  
is required;

46           E. One percent or less if the combined vote received by the  
48 2 candidates is 50,001 to 100,000, otherwise a deposit of  
\$500 is required; or

50           F. One half of 1% or less if the combined vote received by  
52 the 2 candidates is 100,001 or over, otherwise a deposit of  
\$1,000 is required.

2            2. Disposition of deposits. A deposit required by this  
3 section must be made with the clerk of the Supreme Judicial Court  
4 when the recount is requested. This deposit is forfeited to the  
5 State if the recount is begun and it fails to change the result  
6 of the election. If the recount reverses the election, the  
7 deposit must be returned to the candidate requesting the recount.  
8 All deposits required under this section are in addition to any  
9 deposit required for a ballot inspection.

10 **§748-C. Ballot security**

11            1. Ballots and incoming voting lists impounded. Upon  
12 receipt of a recount request, the Chief Justice of the Supreme  
13 Judicial Court shall immediately direct the State Police to  
14 collect all the ballots and voting lists from the clerk of each  
15 municipality concerned.

16            2. Storage of ballots. The State Police shall place all  
17 election materials involved in a recount request in a secure  
18 facility. In addition to storage, the State Police shall provide  
19 security throughout the entire recount process.

20 **§748-D. Judicial appointment for recount**

21            1. Judge appointed. Upon receipt of notification of a  
22 filing for a recount, the Chief Justice of the Supreme Judicial  
23 Court shall designate a judge, active or retired, to serve as  
24 overseer of the recount.

25            2. Appointment notification. The clerk of the Supreme  
26 Judicial Court shall, immediately after the appointment of the  
27 judge, notify all affected candidates and election authorities  
28 who must be listed in the application for a recount.

29            3. Petition for removal. Any party to a recount may, by  
30 filing a petition with the clerk of the Supreme Judicial Court  
31 within 2 days after the receipt of notice of the name and address  
32 of the judge or replacement judge, require the substitution of  
33 another for that judge whom a petition names and alleges to be  
34 prejudiced against the party. Upon receipt of the petition, the  
35 Supreme Judicial Court shall delay the convening of the recount,  
36 resolve the issues presented by the petition and replace any  
37 judge found to be prejudiced.

38 **§748-E. Recount procedure**

39            1. Priorities established. If a ballot contains state and  
40 local candidates or questions and if more than one request is  
41 presented, the judge overseeing the recount shall set priorities  
42 on which requests for recount must be honored first.

2        2. Preliminary hearing. After the petition is filed, the  
judge, within 7 days of the filing of the application, shall call  
4        a preliminary hearing at which motions may be disposed of and at  
which the rules of procedure may be fixed.

6        3. Judge to set recount. The judge may set the place or  
places for the recount.

8  
10       A. The recount must be held as soon as reasonably possible  
at a time and place that affords the candidates a reasonable  
opportunity to be present.

12  
14       B. The judge shall send written notice of the recount to  
the candidates for the office in question, stating the time  
and place of the recount.

16  
18       C. Local municipal election officials shall cooperate with  
the judge in conducting the recount.

20       D. The judge shall order the delivery of election materials  
to a central location under appropriate safeguards outlined  
22       in section 748-C.

24       4. Recount officials. The judge shall permit each  
candidate to select an equal number of representatives to count  
26       the ballots or in the case of voting machines to redetermine the  
vote. The judge shall ensure that the number selected is  
28       sufficient to conduct the recount within a reasonable period.

30       A. The judge may permit each party to the recount to submit  
a list of alternate representatives.

32  
34       B. The judge may provide that if at the time of the recount  
any recount official fails to appear, the remaining recount  
36       officials may appoint substitute recount officials who must  
possess the same qualifications as the recount officials for  
whom they substitute.

38  
40       C. Upon request of a party to the recount, the court shall  
allow each party to appoint representatives sufficient in  
42       number to observe the recount. The expenses of the  
representatives are borne by their respective party.

44       D. The judge shall permit each party to select counsel.

46       E. The judge shall designate members of the Commission on  
Governmental Ethics and Election Practices to be present  
48       during all recounts. These individuals shall perform the  
official recount functions, including oversight of counting  
50       and certification of ballot counts between recount officials.

2       5. Challenged ballots. The written statement of any one  
4       recount official challenging a ballot is sufficient to require  
6       its submission to the judge. The judge, after allowing the  
8       parties to inspect the challenged ballots, shall segregate any  
10       disputed ballots. Each candidate shall sign a statement  
12       certifying recount results and the number of ballots challenged  
14       and submit it to the judge at the close of the recount.

16       6. Package resealed and marked. After the recount, the  
18       judge shall resealed the packages of ballots and the incoming  
20       voting lists and shall note the fact and date of the recount on  
22       them. If there is an appeal, the judge shall keep them in the  
24       secured storage area until needed by the State Election Appeals  
26       Board.

28       7. Withdrawal from recount. A losing candidate who  
30       requests and receives a recount may withdraw from the recount at  
32       any time while the recount shows that candidate to be the loser.  
34       If, during the recount, the losing candidate overtakes and passes  
36       the winning candidate, the losing candidate may not withdraw and  
38       the recount must be completed.

40       A. In the case of a recount requested by a write-in  
42       candidate who fails to receive the minimum number of votes  
44       required for election and who is the only candidate to  
46       appear at the recount, all ballots must be considered  
48       "disputed" if the candidate concludes that that candidate  
50       has received a sufficient number of votes for election.

52       §748-F. Appeal of recount results

54       If a candidate for the office for which a recount has been  
56       requested disagrees with the results of that recount or there are  
58       enough challenged or disputed ballots to affect the result of an  
60       election, a candidate for that office may appeal to the State  
62       Election Appeals Board, as provided in article VI, for a  
64       determination of the election. A written notice of the  
66       candidate's intent to appeal as provided in section 749-C must be  
68       submitted to the clerk of the Supreme Judicial Court within 5  
70       days following the recount.

72       §748-G. Statewide referendum ballots

74       On petition signed by 100 or more affected voters, an  
76       inspection and recount may be held on any referendum question by  
78       applying to the Chief Justice of the Supreme Judicial Court  
80       within the deadlines provided in sections 748 and 748-A. A  
82       deposit is required if the percentage difference between the yes  
84       and no votes falls within the requirements of section 748-B. The  
86       recount process must be consistent with this article and article  
88       VI.

2 If a ballot contains state and local candidates or questions  
3 and if more than one request is presented, the Chief Justice  
4 shall set priorities on which requests for inspection and recount  
5 must be honored first.

6 **Article VI**

8 **DETERMINATION OF DISPUTED ELECTIONS**

10 **§749-A. Jurisdiction**

12 The State Election Appeals Board, established under this  
13 article and referred to as the "board," shall make the final  
14 determination on questions of law regarding election results in  
15 primary, general and special elections for county, state,  
16 referenda or federal offices that are appealed.

18 **§749-B. State Election Appeals Board**

20 1. Panel appointed. Upon receipt of notification of a  
21 filing for an appeal, the Chief Justice of the Supreme Judicial  
22 Court shall designate 3 Active Retired Justices to serve as a  
23 special panel. The panel is designated as the State Election  
24 Appeals Board.

26 2. Appointment notification. The clerk of the Supreme  
27 Judicial Court shall immediately after the appointment of the  
28 board notify all candidates and election authorities listed in  
29 the petition for a recount.

30 3. Petition for removal. Any party to a recount contest  
31 may, by filing a petition within 2 days after the receipt of  
32 notice of the names and addresses of the judges or replacement  
33 judges constituting the board, require the substitution of  
34 another for one judge whom the petition names and alleges to be  
35 prejudiced against that party. Upon receipt of the petition, the  
36 Supreme Judicial Court shall delay the convening of the board,  
37 determine the issues presented by the petition and replace any  
38 judge found to be prejudiced.

40 **§749-C. Appeal procedure**

42 1. Procedure. An appeal from a decision by the judge  
43 appointed to oversee the recount may be taken to the board, if  
44 taken within 5 days of the final determination and in accordance  
45 with the procedure described in this section.

48 A. The appellant must file the appeal request with the  
49 clerk of the Supreme Judicial Court within 5 days of the  
50 final determination. After notice of appeal is filed, the  
51 parties have 10 days to file briefs with the clerk.

2 B. The board shall notify the opposing candidate and shall  
3 set a time, date and place for hearing on the matter. The  
4 hearing must be held within 15 days after the board receives  
5 the appeal.

6 C. The board may not recount the ballots, but shall  
7 determine questions of fact and opinion. The board may  
8 investigate and make findings of fact and issue an opinion  
9 on the final determination of the results, within the limits  
10 of the Constitution of Maine and the United States  
11 Constitution, of any contested county, state or federal  
12 election within the State. For this purpose, the board may  
13 subpoena witnesses and records and take evidence under  
14 oath. A person who fails to obey the lawful subpoena of the  
15 board or to testify before the board under oath must be  
16 punished by the court for contempt upon application of the  
17 Attorney General on behalf of the board.

18 2. Reports. In the following instances, the judge  
19 appointed to oversee the recount shall send copies of the  
20 findings of fact and opinions.

21 A. In cases involving elections where the Constitution of  
22 Maine or the United States Constitution provides for the  
23 final determination of the election of a candidate, the  
24 judge shall send a copy of the findings of fact and opinion  
25 to the body vested with final determination powers subject  
26 to the right of appeal under section 748-F.

27 B. In cases involving general and special elections for  
28 county office, the judge shall send a copy of the findings  
29 of fact and opinion to the Secretary of State, the Governor  
30 and each candidate and shall make the findings available to  
31 the public. The Governor shall make the final determination  
32 in these cases, subject to the right of appeal under section  
33 749-D.

34 C. In all other cases involving primary, general and  
35 special elections, the judge shall send a copy of the  
36 findings of fact and opinion to the Secretary of State, the  
37 Governor and each candidate and shall make the findings  
38 available to the public. The Governor shall make the final  
39 determination in these other cases.

40 D. The judge shall send copies of the findings of fact and  
41 opinion on election contests to all parties to the recount  
42 of the election before the judge. These findings must be  
43 mailed to the parties by certified mail within 3 days after  
44 the judge concludes the recount.

45 §749-D. Judicial determination of disputed county office  
46

2 A person who claims to have been elected to any county  
3 office may proceed against another who claims title to the office  
4 as follows.

5 1. Procedure. The person must bring a complaint in the  
6 Superior Court within 15 days after the certificate of election  
7 is issued. The complaint must allege the facts upon which the  
8 person relies in maintaining the action. The action must be  
9 brought in the county where the defendant resides. The court  
10 shall hear and decide the case as soon as reasonably possible.

11 2. Appeal procedure. The party against whom the judgment  
12 is rendered may appeal to the Supreme Judicial Court within 10  
13 days after entry of the judgment. The appellant must file the  
14 required number of copies of the record with the clerk of courts  
15 within 20 days after filing the notice of appeal. Within 30 days  
16 after notice of appeal is filed, the parties must file briefs  
17 with the clerk of courts. As soon as the records and briefs have  
18 been filed, the court shall immediately consider the case and  
19 shall issue its decision as soon as reasonably possible. Final  
20 judgment must be entered accordingly.

21 3. Court to issue order. As soon as final judgment has  
22 been rendered, the Superior Court, on request of the prevailing  
23 party, shall issue an order to the party unlawfully claiming or  
24 holding the office, commanding immediate surrender of the office  
25 to the person who has been adjudged lawfully entitled to it,  
26 together with all the records and property connected with it.  
27 The prevailing party may assume the duties of the office as soon  
28 as the term begins.

29 4. Costs. The court shall allow costs to the prevailing  
30 party as justice may require.

31 **Sec. 10. 21-A MRSA §752, sub-§2, as amended by PL 1991, c.**  
32 **466, §27, is further amended to read:**

33 **2. Content of application.** The application must contain a  
34 place for the following: Name of applicant, address, address to  
35 which ballot is to be sent, title and year of election at which  
36 ballot is to be cast, name of party in which the applicant is or  
37 desires to be enrolled, date of application and, signature of  
38 applicant and reason for requesting an absentee ballot. It must  
39 contain a place for the applicant to designate the name of a  
40 person to whom the ballot may be delivered and a place for the  
41 registrar to certify whether the applicant is registered and the  
42 party in which the applicant is or desires to be enrolled. It  
43 must contain a conspicuously printed summary warning of the  
44 provisions of Title 17-A, section 703.

45 **Sec. 11. 21-A MRSA §752, sub-§3, as amended by PL 1991, c.**  
46 **466, §28, is further amended to read:**



2           2. It repeals Title 21-A, chapter 9, subchapter III,  
3 article IV on determination of disputed elections and enacts 2  
4 new articles. Title 21-A, chapter 9, subchapter III, article V  
5 creates a new recount and inspection system that shifts  
6 responsibility for the process to the courts. Specifically, the  
7 Chief Justice of the Supreme Court would appoint a judge to act  
8 as overseer of the recount. In addition this article provides  
9 increased security by placing ballot security with the State  
10 Police throughout the entire recount process. Title 21-A,  
11 chapter 9, subchapter III, article VI creates a new appeals board  
12 of 3 active retired justices, appointed by the Chief Justice of  
13 the Supreme Judicial Court. The remainder of the article  
14 incorporates language currently in law.

15           3. It clarifies the residency requirement by eliminating  
16 the phrase "intent to return."  
17

18           4. It directs the Secretary of State to keep a record of  
19 the number of ballots furnished to each municipality and certify  
20 to the Governor the number furnished to each municipality on  
21 election day.  
22

23           5. It specifies that candidates and party workers must  
24 remain outside the guardrail enclosure during an election and  
25 includes candidates and party workers among the people who must  
26 stay outside the guardrail enclosure.  
27

28           6. It requires that an absentee ballot request include the  
29 reason for requesting an absentee ballot.  
30

31           7. It requires that the return envelope in which an  
32 absentee ballot is placed include a statement regarding the  
33 reason for the absentee ballot request.  
34

35           8. It restricts the receipt of or request for absentee  
36 ballots at a polling place on election day during the hours of  
37 operation.  
38

39           9. It requires the municipal officers to specify each  
40 specific time that the clerk intends to begin processing absentee  
41 ballots and allows the candidate's representative to make  
42 absentee ballot inspection requests.  
43  
44