

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

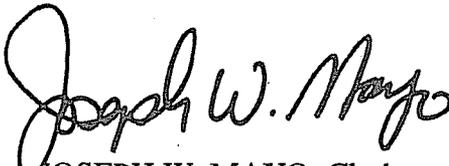
No. 916

H.P. 678

House of Representatives, March 15, 1993

An Act Implementing Comprehensive Election Reform.

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
3 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
7 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
11 court shall reseal the packages of ballots and the incoming
12 voting lists and shall note the fact and date of inspection on
13 them.

14 **§748-A. Recount**

16 If a losing candidate in any election applies in writing
17 within 10 days after the tabulation of the vote is submitted to
18 the Governor, the Chief Justice of the Supreme Judicial Court
19 shall permit the candidate or the candidate's counsel to recount
20 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
25 the difference between the total votes received by the candidate
26 requesting a recount and the total votes received by the nearest
27 winning candidate, shown by the official tabulation is:

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

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

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

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

46 E. One percent or less if the combined vote received by the
47 2 candidates is 50,001 to 100,000, otherwise a deposit of
48 \$500 is required; or

50 F. One half of 1% or less if the combined vote received by
51 the 2 candidates is 100,001 or over, otherwise a deposit of
52 \$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
3 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
5 which the rules of procedure may be fixed.

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

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

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

14 C. Local municipal election officials shall cooperate with
15 the judge in conducting the recount.

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

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

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

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

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

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

36 E. The judge shall designate members of the Commission on
37 Governmental Ethics and Election Practices to be present
38 during all recounts. These individuals shall perform the
39 official recount functions, including oversight of counting
40 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 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
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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