

MAINE STATE LEGISLATURE

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JDK
R. of S.

L.D. 1477

(Filing No. H-601)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "C" to COMMITTEE AMENDMENT "A" to S.P. 478,
L.D. 1477, Bill, "An Act to Implement the Recommendations of the
Special Commission on Electoral Practices"

Amend the amendment by striking out all of sections 43 and
44 and inserting in their place the following:

Sec. 43. 21-A MRSA §§737-A and 737-B are enacted to read:

§737-A. Recount procedure

If, after an initial tally of the ballots, the margin
between the number of votes cast for the leading candidate and
the number of votes cast for the 2nd-place candidate is less than
1% of the total number of votes cast in that race, a recount is
presumed necessary.

Once a recount is triggered by this presumption, or a
recount is requested, the Secretary of State shall notify the
State Police, who shall take physical control of all ballots and
related materials involved in the recount as soon as possible.

The State Police shall store and maintain exclusive control
over the ballots and other materials pending and during the
recount except when the counting is being conducted by the judge
appointed under subsection 2.

If a losing candidate in any election applies in writing
within 7 days after the tabulation of the vote is submitted to
the Governor, the Chief Justice of the Supreme Judicial Court
shall permit the candidate or the candidate's counsel to recount
the ballots under the provisions of this section.

If, after the official tabulation is submitted to the
Governor, the apparent winner is determined the losing candidate,
that candidate may request another recount within 3 business days
after the date the Governor receives the tabulation.

HOUSE AMENDMENT

2 1. Deposit for recount. All deposits required by this
3 section must be made with the clerk of the Supreme Judicial Court
4 when a recount is requested. Once the recount has begun, the
5 deposit made by the candidate requesting the recount is forfeited
6 to the State if the resulting count fails to change the outcome
7 of the election. If the recount reverses the election, the
8 deposit must be returned to the candidate requesting the
9 recount. The amount of the deposit is calculated as follows.

10 A. If the percentage difference shown by the official
11 tabulation between the leading candidate and the 2nd-place
12 candidate is 2% or less, a deposit is not required.

13 B. If the percentage difference is more than 2% and less
14 than 4%, the deposit is \$500.

15 C. If the percentage difference is 4% or more, the deposit
16 is \$1,000.

17 2. Judicial appointment for recount Upon receipt of
18 notification of a filing for a recount, the Chief Justice of the
19 Supreme Judicial Court shall designate a judge, active or
20 retired, to serve as overseer of the recount.

21 The clerk of the Supreme Judicial Court shall, immediately after
22 the appointment of the judge, notify all affected candidates and
23 election authorities who must be listed in the application for a
24 recount.

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

33 3. Priorities established. If a ballot contains the names
34 of state and local candidates or questions and if more than one
35 request is presented, the judge overseeing the recount shall set
36 priorities on which requests for recount must be honored first.

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

41 5. Judge to set recount. The judge may set the place or
42 places for the recount.

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

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

10 C. Local municipal election officials shall cooperate with
12 the judge in conducting the recount.

14 D. The judge shall order the delivery of election materials
to a central location under appropriate safeguards.

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

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

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

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

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

38 7. Persons prohibited from working at recount.
40 Confidential state employees, employees of the Legislature and
elected state officials may not participate in ballot recounts in
42 any capacity. This subsection does not prohibit employees within
the Department of the Secretary of State, election officials and
44 staff of the Department of the Attorney General and the Judicial
Department to be designated by the judge administering the
46 recount to perform duties with respect to a recount.

48 8. List of recount personnel. The clerk of the Supreme
Judicial Court shall maintain a list of recount personnel for 2
years after the recount.

HOUSE AMENDMENT

2 9. Challenged ballots. The written statement of any one
3 recount official challenging a ballot is sufficient to require
4 its submission to the judge. The judge, after allowing the
5 parties to inspect the challenged ballots, shall segregate any
6 disputed ballots. Disputed ballots that are not resolved must be
7 photocopied by the judge. The photocopy of the ballot is not a
8 public record and must be kept separate from the original ballots.

10 When a recount is requested by a write-in candidate who did not
11 receive the minimum number of votes required, if the write-in
12 candidate is the only candidate at the recount and if it appears
13 from the recount that a sufficient number of votes for that
14 candidate has been received at the election, then all ballots
15 from that election are considered "disputed." Each candidate
16 shall sign a statement certifying recount results and the number
17 of ballots challenged and submit it to the judge at the close of
18 the recount.

20 10. Mistake in ballot count. If it is found that a mistake
21 was made in counting the ballots on election day, the Secretary
22 of State shall submit a corrected tabulation to the Governor.

24 11. Package resealed and marked. After the recount, the
25 judge shall reseat the packages of ballots and the incoming
26 voting lists and shall note the fact and date of the recount on
27 them. If there is an appeal, the judge shall keep them in the
28 secured storage area until needed by the Supreme Judicial Court.

30 12. Withdrawal from recount. A candidate who requests and
31 receives a recount may withdraw from the recount at any time
32 while the recount shows that candidate to be the loser. If,
33 during the recount, the candidate requesting the recount
34 overtakes and passes the candidate who initially appeared to win
35 the election, the candidate requesting the recount may not
36 withdraw the request and the recount must be completed.

38 **§737-B. Appeal of recount results**

40 If there are enough challenged or disputed ballots to affect
41 the result of an election, a candidate for the office for which a
42 recount was requested may appeal to the Chief Justice of the
43 Supreme Judicial Court for a determination of the election. A
44 written notice of the candidate's intent to appeal must be
45 submitted to the clerk of the Supreme Judicial Court within 5
46 days following the recount.

48 **Sec. 44. 21-A MRSA §738,** as amended by PL 1987, c. 188, §10,
49 is further amended to read:
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§738. Statewide referendum ballots

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On petition signed by 100 or more affected voters, an ~~inspection and~~ a recount may be held on any referendum question by applying to the Secretary of State Supreme Judicial Court within the ~~deadlines~~ deadline provided in ~~sections 736 and 737~~ section 737-A. A deposit shall ~~be~~ is required if the percentage difference between the yes and no votes falls within the requirements of section 737 737-A, subsection 2 1. Appeal of challenged or disputed ballots ~~must be~~ is to the ~~Commission on~~ Governmental Ethics and Election Practices as provided under Article IV Chief Justice of the Supreme Judicial Court.

If a ballot contains state and local candidates or questions, the Secretary of State judge appointed pursuant to section 737-A, subsection 2 shall ~~set priorities on~~ determine which requests for ~~inspection and~~ recount shall must be honored first ~~if~~ when more than one request is presented.

Further amend the amendment by striking out all of the fiscal note and inserting in its place the following:

FISCAL NOTE

1993-94

APPROPRIATIONS/ALLOCATIONS

General Fund \$63,000

The Department of the Secretary of State will require an additional General Fund appropriation of \$63,000 in fiscal year 1993-94 for providing municipalities with sufficient metal boxes in which to place the used ballots. This appropriation is based on the purchase and distribution of approximately 3,000 boxes to 676 municipalities at a cost of \$21 a piece.

This bill increases the class of crime for several offenses resulting in additional costs to state and county correctional facilities.

Sentences of more than 9 months for Class B crimes must be served in a state correctional institution. The cost to the State per sentence is \$84,563 based upon an average length of stay of 3 years and 6 months. The State also must reimburse counties for sentences served in county jails of 9 months or less for this new crime pursuant to the Communities Corrections Act.

2 Sentences of more than 9 months for Class C crimes must be
served in a state correctional institution. The cost to the
4 State per sentence is \$42,050 based upon an average length of
stay of one year and 9 months. The State also must reimburse
6 counties for sentences served in county jails of 9 months or less
for this new crime pursuant to the Communities Corrections Act.

8 Sentences imposed for Class D offenses must be served in a
county jail. The average cost per sentence for a Class D crime
10 is \$7,439 based upon an average length of stay of 119 days. The
additional costs to the counties for the housing of each offender
12 sentenced under this new crime will not require reimbursement by
the State.

14 The Judicial Department may require additional General Fund
16 appropriations to cover increased indigent defense costs. The
collection of additional fines may increase General Fund revenues
18 by minor amounts.

20 The additional costs to investigate and prosecute alleged
violations of the election laws can be absorbed by the Department
22 of the Attorney General utilizing existing budgeted resources.

24 The Commission on Governmental Ethics and Election Practices
will realize some minor savings from shifting the appeal process
26 for disputed ballots to the courts. The Judicial Department will
be able to absorb the additional workload and administrative
28 costs associated with this shift within its existing budgeted
resources.

30 The Department of the Secretary of State will realize some
32 minor savings from the shift of responsibility for recounts to
the courts. The Judicial Department will also be able to absorb
34 the additional workload and administrative costs associated with
this shift of responsibility.

36 The State Police can absorb within existing budgeted
38 resources the costs associated with storing and securing ballots
for recounts.'

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STATEMENT OF FACT

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46 This amendment places the authority for recounts of disputed
elections under the jurisdiction of the courts rather than the
Secretary of State. Under this amendment, the Chief Justice of

HOUSE AMENDMENT "C" to COMMITTEE AMENDMENT "A" to S.P. 478, L.D.
1477

2 the Supreme Judicial Court appoints a judge to act as the
overseer of a recount.

Filed by Rep. Whitcomb of Waldo
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