

MAINE STATE LEGISLATURE

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L.D. 1477

(Filing No. S-343)

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STATE OF MAINE
SENATE
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE OF CONFERENCE 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 bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 21-A MRSA §31, as enacted by PL 1985, c. 161, §6, is repealed.

Sec. 2. 21-A MRSA §§32 and 33 are enacted to read:

§32. Violations and penalties

1. Class E crime. A person commits a Class E crime if that person:

A. Knowingly violates a provision of this Title for which no penalty has been provided; or

B. Knowingly displays or distributes political advertisements in or on state-owned or state-leased property.

This paragraph does not apply to acts on state highways or to displays on motor vehicles not owned by the State while temporarily parked in parking areas on land maintained by the State. This paragraph does not apply to acts in or on a state-owned or state-leased building for a period beginning 48 hours before and ending 48 hours after that building is used by a political party to conduct a political activity within the building.

2. Class D crime. A person commits a Class D crime if that person:

2 A. Is a public official and knowingly fails or refuses to
4 perform a duty required of that official under this Title.

6 **§33. Prosecution of violations**

8 The Attorney General shall designate a Deputy Attorney
10 General or an Assistant Attorney General to investigate and
12 prosecute alleged violations of the election laws. This section
14 does not preclude a district attorney from investigating and
16 prosecuting election law violations.

18 **Sec. 3. 21-A MRSA §112, sub-§1, as enacted by PL 1985, c. 161,**
20 **§6, is amended to read:**

22 **1. Residence.** The residence of a person is that place in
24 which his habitation is fixed, and to which, whenever he is
26 absent, he has the intention where the person has established a
28 fixed and principal home to which the person, whenever
30 temporarily absent, intends to return.

32 A. The following factors, if applicable, are relevant to a
34 determination of a person's intention to establish a
36 residence under this section:

38 (1) A direct statement of intention by the person;

40 (2) The location of any dwelling currently occupied by
42 the person;

44 (3) The duration of the person's habitation at the
46 current dwelling and the place where residence is
48 sought to be established, if different;

50 (4) The proportional amount of time the person is
 absent from the place where residence is sought to be
 established and the reasons for that absence;

(5) The location of any real or personal property
 owned by the person;

(6) The place where any motor vehicle owned by the
 person is registered;

(7) The primary location of the person's business,
 profession or employment, if any;

(8) The place where any resident income tax return is
 filed;

- 2 (9) The address at which the person's mail is received;
- 4 (10) The place of issuance of any current resident
hunting or fishing licenses held by the person;
- 6 (11) The place of issuance of any current business or
professional licenses held by the person;
- 8 (12) The place of issuance of any motor vehicle
10 operator's license held by the person;
- 12 (13) The location of any bank accounts in the person's
name;
- 14 (14) The receipt of any public benefit conditioned
16 upon residency, defined substantially as provided in
this subsection;
- 18 (15) The person's community activities, including, but
20 not limited to membership in local social, charitable
or business organizations and religious institutions;
22 and
- 24 (16) Any other objective facts tending to indicate a
26 person's intention regarding that person's place of
residence.

28 No single factor described in this paragraph is
30 determinative of a person's intention. All applicable
factors must be considered together to determine a person's
32 objectively manifested intention to establish a residence.

34 B. The existence of any of the following factors creates a
presumption that the person lacks the intention to establish
36 a residence under this section:

- 38 (1) The failure to file an income tax return in this
40 State as a resident, if the person has earned taxable
income;
- 42 (2) The registration of a motor vehicle in a
jurisdiction other than that in which residence is
44 sought to be established; or
- 46 (3) The possession of a motor vehicle operator's
license from a jurisdiction other than this State.

48 This presumption may be overcome by other evidence, as
described in paragraph A, that clearly indicates a contrary
50 intention.

R. of S.

2 **Sec. 4. 21-A MRSA §112, sub-§14**, as enacted by PL 1987, c. 93,
4 is amended to read:

6 **14. Persons incarcerated in correctional facilities.** The
8 residence of a person incarcerated in a correctional facility, as
10 defined in Title 34-A, section 1001, does not include the
12 municipality where a person is incarcerated unless the person had
14 resided in that municipality prior to incarceration.

16 A person incarcerated in a correctional facility may apply to
18 register to vote in any municipality where that person has
20 previously ~~had a fixed habitation and to which he~~ established a
22 fixed and principal home to which the person intends to return.

24 **Sec. 5. 21-A MRSA §112, sub-§15** is enacted to read:

26 **15. Nontraditional residence.** A person may have a
28 nontraditional residence, including, but not limited to a
30 shelter, park or underpass. A person's residency is not subject
32 to challenge on the sole basis that the person has a
34 nontraditional residence.

36 **Sec. 6. 21-A MRSA §121, sub-§1-A** is enacted to read:

38 **1-A. Identification and proof.** Registrations taken by
40 outside agencies or through the mail must be received in the
42 registrar's office by the close of business 15 days before
44 election day in order for the persons who registered to appear on
46 the voter list as registered for the election.

48 A person who registers during the 15 days before election day or
on election day shall register in person and show proof of
identity and residency. If satisfactory proof can not be
provided to the registrar or deputy, the person casts a
challenged ballot.

Sec. 7. 21-A MRSA §159, sub-§1, as enacted by PL 1985, c. 161,
§6, is amended to read:

1. False statement or false oath. A person who makes a
false statement or who takes a false oath before an official
concerning the qualifications of any person for registration or
enrollment and who does not believe the statement to be true is
guilty of committing a Class -E- D crime.

Sec. 8. 21-A MRSA §161, sub-§2, as amended by PL 1991, c. 466,
§10, is further amended to read:

2 **2. List current.** The registrar shall keep a list current
 4 at all times by adding the names of new voters and by removing
 6 the names of those who have died, moved from the municipality
 8 with an apparent intention of abandoning their residence in the
 10 municipality or become disqualified to vote. When the registrar
 12 employs the facilities of the United States Postal Service to
 14 determine which voters have moved from the municipality and when
 16 the United States Postal Service reports to the registrar that a
 18 voter has moved from the address shown on the voting list without
 20 having notified the United States Postal Service of a forwarding
 22 address, the registrar shall remove the name of the voter from
 24 the voting list and is not required to send, or to attempt to
 26 send, a notice to the voter in accordance with section 162. The
 28 registrar may not remove the name of a registered voter from the
 30 voter list solely for not voting in previous elections.

32 The registrar may contact other municipalities within the
 34 representative district or senatorial district in which the
 36 registrar's municipality is apportioned to ascertain whether
 38 voters on that municipality's voting list are also registered in
 40 another municipality in the district.

42 **Sec. 9. 21-A MRSA §167**, as enacted by PL 1985, c. 161, §6, is
 44 amended to read:

46 **§167. Violation and penalty**

48 A person who places or removes the name of another on or
 50 from a voting list or general register, knowing he that person
 has no legal right to do so ~~is guilty of,~~ commits a Class -E- C
 crime.

52 **Sec. 10. 21-A MRSA §503, sub-§8** is enacted to read:

54 **B. Training.** The Secretary of State shall encourage
 56 municipalities to provide training biennially to election
 58 officials.

60 **Sec. 11. 21-A MRSA §601, sub-§1**, as enacted by PL 1985, c.
 62 161, §6, is amended to read:

64 **1. Arrangement.** The ~~ballet~~ ballots must be arranged in one
 66 ~~column~~ a manner that is as consistent and uniform as possible
 68 throughout the State.

70 **Sec. 12. 21-A MRSA §601, sub-§2, ¶A**, as enacted by PL 1985, c.
 72 161, §6, is amended to read:

74 A. ~~The following instructions~~ Instructions must be printed
 76 in bold type at the top of the ballot+ "MAKE-A-CROSS-(X)-OR

2 A-CHECK-MARK--(-)--IN-THE-SQUARE-AT-THE-LEFT-OF-THE-NAME-OF
THE-CANDIDATE-FOR-WHOM-YOU-WISH-TO-VOTE,--YOU-MAY-VOTE-FOR
4 A-PERSON-WHOSE-NAME-DOES-NOT-APPEAR-ON-THE-BALLOT-BY-WRITING
IT-OR-PASTING-A-STICKER-WITH-THE-PERSON'S-NAME-AND
6 MUNICIPALITY-OF-RESIDENCE-ON-IT-IN-THE-PROPER-BLANK-SPACE
AND-MARKING-THE-SQUARE-AT-THE-LEFT,--DO-NOT-ERASE-NAMES."
8 informing the voter how to designate the voter's choice on
the ballot.

10 **Sec. 13. 21-A MRSA §601, sub-§2, ¶F,** as enacted by PL 1985, c.
12 161, §6, is repealed and the following enacted in its place:

14 F. There must be a place on the ballot for the voter to
designate the voter's choice.

16 **Sec. 14. 21-A MRSA §601-A, sub-§2, ¶A,** as amended by PL 1993,
18 c. 334, §4, is further amended to read:

20 A. ~~The following instructions~~ Instructions must be printed
in bold type at the top of the ballot informing the voter
how to designate the voter's choice on the ballot.

22 ~~"MAKE-A-CROSS-(X)-OR-A-CHECK-MARK-(-)-IN-THE-SQUARE-AT-THE
24 LEFT-OF-THE-NAME-OF-THE-CANDIDATE-FOR-WHOM-YOU-WISH-TO
VOTE,--YOU-MAY-VOTE-FOR-ONE-PERSON-ONLY,--YOU-MAY-VOTE-FOR-A
26 PERSON-WHOSE-NAME-DOES-NOT-APPEAR-ON-THE-BALLOT-BY-WRITING
IT-OR-PASTING-A-STICKER-WITH-THAT-PERSON'S-NAME-ON-IT-IN-THE
28 PROPER-BLANK-SPACE-AND-MARKING-A-CROSS-(X)-OR-A-CHECK-MARK-(-)
)-IN-THE-PROPER-SQUARE-AT-THE-LEFT,--DO-NOT-ERASE-NAMES.~~

30 **Sec. 15. 21-A MRSA §602, sub-§2, ¶¶A and C,** as enacted by PL
32 1985, c. 161, §6, are amended to read:

34 A. ~~The names of all nominees for office must as far as
possible be placed in one vertical column,--When there are
36 ever 25 names to be printed on the ballot, another column or
columns may be added for the names of the additional
38 nominees,--When 2 or more columns are used, the same number
of names,--so far as possible,--must be printed in each
40 column. The names of candidates for any one office may not
be split into more than one column regardless of number.
42 The initial letter letters of the last name names of the
several candidates in each column must be printed directly
44 beneath each other in a vertical line and the initial letter
letters of the respective party designations of each nominee
46 must be printed directly beneath each other in a vertical
line.~~

48 C. ~~The following instructions~~ Instructions must be printed
50 in bold type at the top of the ballot: "MAKE-A-CROSS-(X)-OR

2 ~~A-CHECK-MARK-()-IN-THE-SQUARE-AT-THE-LEFT-OF-THE-NOMINEE~~
 4 ~~FOR-WHOM-YOU-WISH-TO-VOTE---YOU-MAY-VOTE-FOR-A-PERSON-WHOSE~~
 6 ~~NAME-DOES-NOT-APPEAR-ON-THE-BALLOT-BY-WRITING-IT-AND-THE~~
 8 ~~PERSON'S-MUNICIPALITY-OF-RESIDENCE-IN-THE-PROPER-BLANK-SPACE~~
 10 ~~AND-MARKING-THE-SQUARE-AT-THE-LEFT--DO-NOT-ERASE-NAMES."~~
 12 informing the voter how to designate the voter's choice on
 14 the ballot.

16 **Sec. 16. 21-A MRSA §602, sub-§2, ¶G**, as enacted by PL 1985, c.
 18 161, §6, is repealed and the following enacted in its place:

20 G. There must be a place on the ballot for the voter to
 22 mark the ballot to designate the voter's choice.

24 **Sec. 17. 21-A MRSA §605, sub-§2, ¶A** is enacted to read:

26 A. A notice must be conspicuously posted at the entrances
 28 to all polling places and voter registration places
 30 informing voters and others that knowingly violating the
 32 State's election laws is a crime punishable by up to 10
 34 years in state prison and a fine not to exceed \$20,000.

36 **Sec. 18. 21-A MRSA §674**, as enacted by PL 1985, c. 161, §6,
 38 is repealed and the following enacted in its place:

40 **§674. Violations and penalties**

42 **1. Class E crime.** A person commits a Class E crime if that
 44 person:

46 A. Knowingly removes a ballot from a voting place on
 48 election day except as authorized by this Title;

50 B. Interferes with a voter attempting to cast a vote or
 52 interferes with or attempts to influence a voter in marking
 54 that voter's ballot;

56 C. Assists or offers to assist another person at the voting
 58 place in marking that other person's ballot, unless the
 60 person has been requested to do so by the warden or ward
 62 clerk; or

64 D. Shows that person's marked ballot to another with the
 66 intent to reveal how that person voted.

68 **2. Class D crime.** A person commits a Class D crime if that
 70 person:

72 A. Assists another person in voting, knowing that the other
 74 person is not eligible to vote; or

R. of S.

2 B. Solicits votes from another person, knowing that the
4 other person is under guardianship because of mental illness.

6 3. Class C crime. A person commits a Class C crime if that
6 person:

8 A. Knowingly causes a delay in the registration or
10 enrollment of another or knowingly causes a delay in the
12 delivery of an absentee ballot or absentee ballot
12 application with the intent to prevent a person from voting
12 or to render that person's vote ineffective;

14 B. Votes or attempts to vote knowing that the person is not
16 eligible to do so or having once voted, whether within or
16 outside this State, again votes or attempts to vote at the
18 same election; or

20 C. Votes or attempts to vote by using the name of another.

22 4. Class B crime. A person commits a Class B crime if that
22 person:

24 A. Tamper with ballots or voting lists or opens or breaks
26 a seal of a sealed box or packages of ballots or voting
28 lists with the intent of changing the outcome of any
30 election, except as permitted by this Title. In sentencing
32 a person for a violation under this paragraph, the court may
32 suspend the person's right to vote in any election in this
32 State for a period of up to 3 years. This penalty is in
32 addition to any penalty provided in Title 17-A.

34 **Sec. 19. 21-A MRSA §682, sub-§2, as enacted by PL 1985, c.**
34 **161, §6, is amended to read:**

36 **2. Influence prohibited.** Within 250 feet of the entrance
38 to the voting place as well as within the voting place itself, no
40 a person may not influence or attempt to influence another
42 person's ~~choice of~~ decision regarding a candidate or
44 ballot issue. This limitation does not prohibit a candidate from
44 attending the voting place and orally communicating with voters,
44 as long as he the candidate does not attempt to influence their
44 vote.

46 **Sec. 20. 21-A MRSA §682, sub-§3, as amended by PL 1991, c.**
46 **466, §20, is further amended to read:**

48 **3. Advertising prohibited.** No A person may not display any
50 advertising material, operate any advertising medium, including a
50 sound amplification device, or distribute campaign literature,

2 posters, palm cards, buttons or stickers intended to influence
the opinion of any voter, within 250 feet of the entrance to
4 either the voting place or the registrar's office. The term
"sound amplification device" includes, but is not limited to,
6 sound trucks, loudspeakers and blowhorns.

8 Party workers and others who remain in the voting place outside
the guardrail enclosure may not use within the voting place
cellular phones, beepers, voice or signal pagers or similar
10 devices that make noise or allow direct audible voice
communication within the voting place.

12
14 A. This subsection does not apply to advertising material
on automobiles traveling to and from the voting place. It
16 does not prohibit a person from passing out stickers at the
voting place to be pasted on the ballot at a primary
18 election. It does not prohibit a person, ~~other than an~~
~~election official~~, who is at the polls solely for the
20 purpose of voting from wearing a campaign button when the
longest dimension of the button does not exceed 3 inches.

22 B. A person who knowingly engages in activities prohibited
24 by this section ~~is guilty of~~ commits a Class E crime.

26 **Sec. 21. 21-A MRSA §691**, as enacted by PL 1985, c. 161, §6,
is amended to read:

28 **§691. Marking ballots; primary election**

30 A voter shall mark ~~his~~ the ballot at a primary election with
~~a cross (X) or a check mark (✓) according to the following~~
32 ~~provisions~~ as instructed in the directions on the ballot.

34 **1. Individual candidate method.** ~~He~~ The voter must place
~~the mark in the square at the left of and close to~~ the ballot as
36 instructed in the directions on the ballot to indicate the name
of each candidate for nomination for whom he the voter wishes to
38 vote.

40 **2. Write-in vote.** If he the voter wishes to vote for a
42 person whose name is not on the ballot, he the voter must write
the name and municipality of residence or paste a sticker
44 containing the name and municipality of residence in the blank
space provided at the end of the list of candidates for
46 nomination to the office in question, ~~with the last name first or~~
~~last.~~ He The voter must then place ~~the mark in the square at the~~
~~left of the space~~ the ballot as instructed in the directions on
48 the ballot to indicate a vote for the write-in candidate.

R. of S.

2 Sec. 22. 21-A MRSA §692, as enacted by PL 1985, c. 161, §6,
is amended to read:

4 **§692. General election**

6 A voter shall mark his the ballot at a general election with
a--cross--(X)--or--a--check--mark--(--)--according--to--the--following
8 p~~r~~evisi~~o~~ns as instructed in the directions on the ballot.

10 1. **Individual candidate method.** He The voter must place
the mark ~~in the square at the left of and close to~~ the ballot as
12 instructed in the directions on the ballot to indicate a vote for
the name of each nominee for whom he the voter wishes to vote,
14 regardless of political designation, but must follow directions
as to the number of nominees to be elected to each office.

16 2. **Write-in vote.** If he the voter wishes to vote for a
18 person whose name is not on the ballot, he the voter must write
the name and municipality of residence in the blank space
20 provided at the end of the list of nominees for the office in
question, ~~with the last name first or last.~~ He The voter must
22 then place ~~the mark in the square at the left of the space~~ the
ballot as instructed in the directions on the ballot. A sticker
24 may not be used to vote for a write-in candidate.

26 3. **Referendum question.** In voting on a referendum
question, he the voter shall place ~~the mark in the square of his~~
28 ~~choice at the left of the question~~ the ballot as instructed in
the directions on the ballot.

30 Sec. 23. 21-A MRSA §696, sub-§1, as amended by PL 1985, c.
32 357, §§4 and 19, is further amended to read:

34 1. **Challenged ballot.** A challenged ballot must be counted
the same as a regular ballot. The validity of a challenged
36 ballot need not be determined unless it affects the results of an
election.

38 If the challenged ballot affects the result of an election, the
40 envelope containing the challenge certificate shall must be
submitted to the ~~Commission on Governmental Ethics and Election~~
42 ~~Practices~~ Supreme Judicial Court and its validity shall must be
determined, ~~subject to the right of appeal for county offices~~
44 ~~under section 746,~~ except where when final determination of the
election of a candidate is governed by the ~~Constitution of Maine~~
46 ~~or the~~ United States Constitution. The challenge certificate
shall must be in such a form as the Secretary of State may
48 establishes by rule establish.

R. of S.

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2 **Sec. 24. 21-A MRSA §698, sub-§2**, as amended by PL 1987, c.
188, §6, is repealed.

4 **Sec. 25. 21-A MRSA §698, sub-§§2-A and 2-B** are enacted to read:

6 2-A. Used ballots placed in tamper-proof containers. The
7 election clerks shall place the sealed packages of used ballots,
8 envelopes containing challenge certificates, spoiled ballots,
9 defective ballots, void ballots, used absentee ballots, used
10 absentee envelopes and used absentee applications in tamper-proof
11 ballot containers. The ballot containers must be furnished by
12 the Secretary of State.

14 A tamper-proof ballot container must be sealed before leaving the
15 precinct with a numbered seal that must correlate with a
16 certificate identifying the person sealing the container and the
17 time of the sealing. The seals and identifying certificates must
18 be furnished by the Secretary of State.

20 A. Transfer and resealing of the ballots to other
21 containers for permanent storage must be done 60 or more
22 days following the election. The municipal clerk shall make
23 the transfer in the presence of one representative from each
24 of the major political parties. The containers must be
25 securely sealed.

26 2-B. Unused ballots placed in containers. At the close of
27 the polls, all unused, unsealed absentee and regular ballots must
28 be voided by a physical mark unless all voted ballots have been
29 validated in the course of the election. All sealed ballots must
30 remain sealed and be wrapped with tamper-proof tape. All unused
31 ballots, including both the unsealed and the sealed ballots, must
32 be placed in the containers in which the regular ballots were
33 delivered. The containers containing the unused ballots must be
34 clearly marked to indicate that the containers contain unused
35 ballots. These ballots must be stored separately from the used
36 ballots.

38 **Sec. 26. 21-A MRSA §698, sub-§5, ¶A**, as enacted by PL 1985, c.
40 161, §6, is amended to read:

42 A. The portions of subsection 1, paragraph A, and
43 ~~subsection 2~~ which subsections 2-A and 2-B that deal with
44 absentee ballots do not apply to municipalities with 2 or
45 more voting districts where absentee ballots are counted
46 separately.

48 **Sec. 27. 21-A MRSA §712**, as enacted by PL 1985, c. 161, §6,
is amended to read:

2.05

2 §712. Return not delivered

4 If an election return is not delivered to the Secretary of
6 of State ~~must~~ shall send a messenger to the municipality
8 concerned, and the clerk shall give ~~him~~ that messenger a
certified copy of the return.

10 Sec. 28. 21-A MRSA §724, first ¶, as enacted by PL 1985, c.
12 161, §6, is amended to read:

14 Within a reasonable time after an election, the Governor
16 shall issue an election certificate, in accordance with Title 5,
18 section 84, or a notice of apparent election to each person
20 elected to office, according to the tabulation under section
22 722. ~~For cases involving elections finally determined by the~~
24 ~~Governor, a certificate shall be issued under section 744,~~
26 ~~subsection 3, paragraphs B and C. For cases involving elections~~
28 ~~not finally determined by the~~ The Governor, ~~the~~ Governor shall
30 ~~may~~ not issue a certificate while the election is contested
before the ~~Commission on Governmental Ethics and Election~~
~~Practices under Article IV~~ court. ~~If, before the convening of~~
~~the finally determinative body in an election not determined by~~
~~the Governor, the commission~~ the court finds that a candidate has
been apparently elected, the ~~commission~~ court shall immediately
notify the Governor of that apparent election. The Governor
shall issue a notice of apparent election to the person
apparently elected, according to the findings of the ~~commission~~
court.

32 Sec. 29. 21-A MRSA §736, as amended by PL 1987, c. 258, §§1
34 and 2, is repealed.

36 Sec. 30. 21-A MRSA §737, as amended by PL 1991, c. 466, §23,
is repealed.

38 Sec. 31. 21-A MRSA §737-A is enacted to read:

40 §737-A. Recount

42 If, after an initial tally of the ballots, the margin
44 between the number of votes cast for the leading candidate and
46 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.

48 Once a recount is triggered by this presumption, or a
50 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.

2 The State Police shall store and maintain exclusive control
4 over the ballots and other materials pending and during the
 recount except when the counting is being conducted by the
 Secretary of State.

6
8 A losing candidate in any election who desires a recount
 must file with the Secretary of State a written request for a
10 recount within 7 business days after the election. The recount
 is held under the supervision of the Secretary of State, who
12 shall allow the candidate or the candidate's counsel to recount
 the ballots.

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

18 1. Deposit for recount. All deposits required by this
20 section must be made with the Secretary of State when a recount
 is requested. Once the recount has begun, the deposit made by
22 the candidate requesting the recount is forfeited to the State if
 the resulting count fails to change the outcome of the election.
24 If the recount reverses the election, the deposit must be
26 returned to the candidate requesting the recount. The amount of
 the deposit is calculated as follows.

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

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

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

38 2. Recount request. If a ballot contains the names of
 state and local candidates or questions, the Secretary of State
40 shall determine which requests for recount must be honored first
 when more than one request is presented.

42 3. Notice of recount. The Secretary of State shall send
44 written notice of a recount to the candidates for the office in
 question, stating the time and place of the recount.

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

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R. of S.

2 5. Persons prohibited from working at recount.
3 Confidential state employees, employees of the Legislature and
4 elected state officials may not participate in ballot recounts in
5 any capacity. This subsection does not prohibit employees within
6 the Department of the Secretary of State, election officials and
7 staff of the Department of the Attorney General and the Judicial
8 Department from performing their duties with respect to a recount.

10 6. List of recount personnel. The Secretary of State shall
11 maintain a list of recount personnel for 2 years after the
12 recount.

14 7. Disputed ballots segregated. At the recount, the
15 Secretary of State shall segregate disputed ballots. Disputed
16 ballots that are not resolved must be photocopied by a
17 representative of the Secretary of State. The photocopy of the
18 ballot is not a public record and must be kept separate from the
19 original ballots.

20 When a recount is requested by a write-in candidate who did not
21 receive the minimum number of votes required, if the write-in
22 candidate is the only candidate at the recount and it appears
23 from the recount that a sufficient number of votes for that
24 candidate has been received at the election, then all ballots
25 from that election are considered "disputed."

28 8. Mistake in ballot count. If it is found that a mistake
29 was made in counting the ballots on election day, the Secretary
30 of State shall submit a corrected tabulation to the Governor.

32 9. Package resealed and marked. After a recount, the
33 Secretary of State shall reseat the packages of ballots and
34 incoming voting lists, noting the fact and date of the recount on
35 the packages. All challenged and disputed ballots must be
36 packaged separately. The challenged and disputed ballots must be
37 kept until released to the court in case of an appeal.

38 10. Appeal to court. If there are enough challenged or
39 disputed ballots to affect the result of an election, the
40 Secretary of State shall forward the ballots and related records
41 for that election to the clerk of the Supreme Judicial Court.

42 The Chief Justice of the Supreme Judicial Court shall determine
43 the result of the election pursuant to procedures adopted by
44 court rule. The decision of the Chief Justice is final and must
45 be certified to the Governor by the Chief Justice.

48 11. Withdrawal from recount. A candidate who requests and
49 receives a recount may withdraw from the recount at any time
50 while the recount shows that candidate to be the loser. If,

R. of S.

2 during the recount, the candidate requesting the recount
3 overtakes and passes the candidate who initially appeared to win
4 the election, the candidate requesting the recount may not
5 withdraw the request and the recount must be completed.

6 **Sec. 32. 21-A MRSA §738**, as amended by PL 1987, c. 188, §10,
7 is further amended to read:

8 **§738. Statewide referendum ballots**

9 On petition signed by 100 or more affected voters, an
10 ~~inspection and a~~ recount may be held on any referendum question
11 by applying to the Secretary of State within the ~~deadlines~~
12 ~~deadline~~ provided in ~~sections 736 and 737~~ section 737-A. A
13 ~~deposit shall be~~ is required if the percentage difference between
14 the yes and no votes falls within the requirements of section 737
15 737-A, subsection 2 1. Appeal of challenged or disputed ballots
16 ~~must be~~ is to the ~~Commission on Governmental Ethics and Election~~
17 ~~Practices as provided under Article IV~~ Supreme Judicial Court.

18 If a ballot contains state and local candidates or
19 questions, the Secretary of State shall ~~set priorities on~~
20 determine which requests for ~~inspection and~~ recount shall must be
21 honored first ~~if~~ when more than one request is presented.

22 **Sec. 33. 21-A MRSA §739, first ¶**, as enacted by PL 1985, c.
23 161, §6, is amended to read:

24 On request, a municipal clerk or the Secretary of State, or
25 both, shall produce any ballots or incoming voting lists in his
26 their custody before the Governor, ~~the Commission on Governmental~~
27 ~~Ethics and Election Practices~~, either branch of the Legislature,
28 any legislative committee or any a court of competent
29 jurisdiction.

30 **Sec. 34. 21-A MRSA c. 9, sub-c. III, art. IV**, as enacted by PL
31 1985, c. 161, §6, is repealed.

32 **Sec. 35. 21-A MRSA §753, sub-§3, ¶B**, as amended by PL 1991, c.
33 466, §29, is further amended to read:

34 B. The clerk may issue a 2nd absentee ballot to an
35 applicant, if the applicant requests one, in person or in
36 writing and:

- 37 (1) The applicant states good cause, including, but
38 not limited to, loss of, spoiling of or damage to the
39 first absentee ballot; or

R. of S.

(2) An absentee ballot for the applicant which that was furnished to a designated 3rd person is not returned to the clerk's office within 5 2 business days of the date that ballot was sent or delivered to the 3rd person or of the date that 3rd person was notified by the clerk that the ballot was available, or by 10 a.m. on the day before election day, whichever is earlier. If a ballot for an applicant is not returned to the clerk within 5 2 days of notification, then the clerk shall mail a ballot to that applicant on the 6th 3rd day after notification and shall may issue no other ballot to the applicant except for good cause as provided in this subsection. This subparagraph may does not be--construed--to affect the time for delivery of absentee ballots under section 755.

Sec. 36. 21-A MRSA §753, sub-§5, as amended by PL 1985, c. 357, §§10 and 19, is further amended to read:

5. Clerk to list. The clerk shall keep a list of the persons ~~to whom he furnishes~~ furnished absentee ballots until after election day, or the clerk shall file the applications and requests in alphabetical order. The clerk shall keep a list of the persons who vote in the presence of the clerk under subsection 7. The clerk shall submit this list to the registrar for certification before the close of business on the day before election day.

The clerk shall keep a list of the 3rd persons, designated in applications or requests, to whom absentee ballots are sent or delivered under subsection 3 and of the number of absentee ballots sent or delivered to these persons. ~~These 3rd persons may not have more than 40 absentee ballots for voters in a municipality at any time.~~

Sec. 37. 21-A MRSA §791, sub-§2, as amended by PL 1987, c. 572, is repealed and the following enacted in its place:

2. Class D crime. A person commits a Class D crime if that person:

A. Delivers, receives, accepts, notarizes or witnesses an absentee ballot for any compensation. This paragraph does not apply to a governmental employee handling ballots in the course of that employee's official duties or a person who handles absentee ballots before the unvoted ballots are delivered to the municipality or after the voted ballots are returned to the clerk.

Sec. 38. 21-A MRSA §791, sub-§3 is enacted to read:

R.O.S.

2 3. Class C crime. A person commits a Class C crime if that
3 person:

4 A. Forges the name of another on an absentee ballot, the
5 return envelope or the application for an absentee ballot; or

6 B. Is a candidate who, notwithstanding this subchapter,
7 delivers, receives, accepts, notarizes or witnesses an
8 absentee ballot, other than the candidate's own absentee
9 ballot, furnished by the clerk of a municipality in this
10 State. This paragraph does not apply to an elected
11 municipal clerk in an election when no other name for the
12 office of clerk appears on the ballot. In a contested
13 election for the office of clerk, a clerk may not be
14 exempted from the provisions of this paragraph but shall
15 instead appoint a deputy or an assistant to whom the
16 municipality shall pay all associated costs for the duration
17 of the deputy's or assistant's temporary employment in that
18 capacity.

19 **Sec. 39. 21-A MRSA §829**, as enacted by PL 1985, c. 161, §6,
20 is amended to read:

21 **§829. Violation and penalty**

22 Any person who alters, adjusts, operates, moves, unlocks or
23 unseals a voting machine or any part of a voting machine, or who
24 attempts such an act, with the intent of changing the outcome of
25 any election ~~is--guilty--of~~ commits a Class D B crime. In
26 sentencing a person for a violation under this section, the court
27 may suspend the person's right to vote in any election in this
28 State for a period of up to 3 years. This penalty is in addition
29 to any penalty provided in Title 17-A.

30 **Sec. 40. 21-A MRSA §860**, as enacted by PL 1985, c. 161, §6,
31 is amended to read:

32 **§860. Violation and penalty**

33 ~~The penal laws and election laws relating to misconduct at~~
34 ~~elections apply to elections conducted with voting devices and~~
35 ~~automatic tabulating equipment.~~ Any person who, before, during
36 or after an election, tampers with or willfully injures any
37 voting device, ballot cards or other records or equipment used in
38 the election, or interferes or attempts to interfere with the
39 correct operation of such a device or equipment or the secrecy of
40 voting, ~~is--guilty--of~~ commits a Class D C crime.

R. of S.

2 **Sec. 41. 21-A MRSA §906, sub-§1**, as enacted by PL 1985, c.
161, §6, is amended to read:

4 **1. Referendum questions on separate ballot.** Referendum
6 questions must be printed on a ballot separate from the general
 election ballots, except for municipalities using electronic
8 ~~scanning devices. Two squares must be printed at the left of any~~
 ~~referendum question submitted, with "Yes" above one and "No"~~
10 ~~above the other, so that a voter may designate his choice clearly~~
 by a cross or a check mark. There must be a place on the ballot
12 for the voter to designate the voter's choice.

14 **Sec. 42. 30-A MRSA §2533**, as amended by PL 1989, c. 104, Pt.
C, §§8 and 10, is further amended to read:

16 **§2533. Title to municipal office**

18 Within 20 days after election day, a person who claims to
20 have been elected to any municipal office may proceed against
 another who claims title to the office by following the following
22 procedure outlined in Title 21-A, section 746.

24 **1. Procedure.** The person must bring a complaint in the
 Superior Court alleging the facts upon which the person relies in
26 maintaining the action. The action must be brought in the county
 in which the defendant resides. The court shall hear and decide
28 the case as soon as reasonably possible.

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

40 **3. Court to issue order.** As soon as final judgment has
 been rendered, the Superior Court, on request of the prevailing
42 party, shall issue an order to the party unlawfully claiming or
 holding the office, commanding that party to immediately
44 surrender it to the person who has been adjudged lawfully
 entitled to it, together with all the records and property
46 connected with it. The prevailing party may assume the duties of
 the office as soon as the term begins.

48 **4. Costs.** The court shall allow costs to the prevailing
50 party as the court determines reasonable and just.

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Sec. 43. 34-A MRSA §3007, sub-§4, as amended by PL 1985, c. 161, §15, is further amended to read:

4. Violation. The posting of written political material under this section is not a violation of Title 21-A, section 31, subsection--3, 32 or Title 21-A, section 674, subsection 1, paragraph C.

Sec. 44. 34-B MRSA §1410, sub-§4, as amended by PL 1985, c. 506, Pt. A, §71, is further amended to read:

4. Violation. The posting of written political material under this section is not a violation of Title 21-A, section 31, subsection--3 32 or Title 21-A, section 674, subsection 1, paragraph C.

Sec. 45. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1993-94

**SECRETARY OF STATE,
DEPARTMENT OF THE**

Elections and Commissions

All Other \$63,000

Provides funds for the purchase and distribution of approximately 3,000 metal boxes for used ballots to 676 municipalities.

Sec. 46. Effective date. This Act takes effect January 1, 1994.

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

2 for used ballots. This appropriation is based on the purchase
and distribution of approximately 3,000 boxes to 676
4 municipalities at a cost of \$21 apiece.

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

10 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
12 stay of 3 years and 6 months. The State also must reimburse
counties for sentences served in county jails of 9 months or less
14 for this new crime pursuant to the communities corrections laws.

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

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

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

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

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

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

2 STATEMENT OF FACT

4 This committee of conference amendment replaces the entire
6 bill and the entire committee amendment.

8 This amendment incorporates most of Committee Amendment "A"
10 and the changes to the committee amendment proposed by House
12 Amendment "B", House Amendment "D", House Amendment "F" and
14 Senate Amendment "F" to Committee Amendment "A".

16 It further incorporates a modified version of Senate
18 Amendment "E" to Committee Amendment "A" and also amends the
20 definition of "residence" to spell out the criteria to be used in
determining a person's residence for the purposes of voting.

It also clarifies the intent of Senate Amendment "F" to
delete all proposed changes to the method of selecting
registrars, deputy registrars, election clerks and ballot
counters.

Reported by the Committee of Conference on S.P. 478, L.D.
1477. Reproduced and Distributed Pursuant to Senate Rule
12.

(6/28/93)

(Filing No. S-343)