

MAINE STATE LEGISLATURE

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R.O.S.

L.D. 1477

(Filing No. H-707)

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

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Sec. 1. 21-A MRSA §31, as enacted by PL 1985, c. 161, §6, is repealed.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

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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;

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(9) The address at which the person's mail is received;

(10) The place of issuance of any current resident hunting or fishing licenses held by the person;

(11) The place of issuance of any current business or professional licenses held by the person;

(12) The place of issuance of any motor vehicle operator's license held by the person;

(13) The location of any bank accounts in the person's name;

(14) The receipt of any public benefit conditioned upon residency, defined substantially as provided in this subsection;

(15) The person's community activities, including, but not limited to membership in local social, charitable or business organizations and religious institutions; and

(16) Any other objective facts tending to indicate a person's intention regarding that person's place of residence.

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

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

(1) The failure to file an income tax return in this State as a resident, if the person has earned taxable income;

(2) The registration of a motor vehicle in a jurisdiction other than that in which residence is sought to be established; or

(3) The possession of a motor vehicle operator's license from a jurisdiction other than this State.

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

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

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

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

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

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

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

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

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 commits 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 8. 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**

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~~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 A PERSON WHOSE NAME DOES NOT APPEAR ON THE BALLOT BY WRITING IT OR PASTING A STICKER WITH THE PERSON'S NAME AND MUNICIPALITY OF RESIDENCE ON IT IN THE PROPER BLANK SPACE AND MARKING THE SQUARE AT THE LEFT. DO NOT ERASE NAMES.~~ informing the voter how to designate the voter's choice on the ballot.

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

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

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

~~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.

~~"MAKE A CROSS (X) OR 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 ONE PERSON ONLY. YOU MAY VOTE FOR A 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 PROPER BLANK SPACE AND MARKING A CROSS (X) OR A CHECK MARK () IN THE PROPER SQUARE AT THE LEFT. DO NOT ERASE NAMES.~~

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

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

~~C. The following instructions~~ Instructions must be printed 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
interferes with or attempts to influence a voter in marking
that voter's ballot;

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

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

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

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

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

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

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

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

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

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

A. Tamper with ballots or voting lists or opens or breaks a seal of a sealed box or packages of ballots or voting lists with the intent of changing the outcome of any election, except as permitted by this Title.

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

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

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

3. Advertising prohibited. No A person may not display any advertising material, operate any advertising medium, including a sound amplification device, or distribute campaign literature, posters, palm cards, buttons or stickers intended to influence the opinion of any voter, within 250 feet of the entrance to either the voting place or the registrar's office. The term

"sound amplification device" includes, but is not limited to, sound trucks, loudspeakers and blowhorns.

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 devices that make noise or allow direct audible voice communication within the voting place.

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

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

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

§691. Marking ballots; primary election

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

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

2. **Write-in vote.** If he the voter wishes to vote for a person whose name is not on the ballot, he the voter must write the name and municipality of residence or paste a sticker containing the name and municipality of residence in the blank space provided at the end of the list of candidates for 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 the ballot to indicate a vote for the write-in candidate.

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

§692. General election

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2 A voter shall mark his the ballot at a general election with
3 ~~a cross (X) or a check mark (-) according to the following~~
4 provisions as instructed in the directions on the ballot.

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

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

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

26 **Sec. 23. 21-A MRSA §696, sub-§1,** as amended by PL 1985, c.
27 357, §§4 and 19, is further amended to read:

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

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

46 **Sec. 24. 21-A MRSA §698, sub-§2,** as amended by PL 1987, c.
47 188, §6, is repealed.

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

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

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

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

22 2-B. Unused ballots placed in containers. At the close of
 24 the polls, all unused, unsealed absentee and regular ballots must
 26 be voided by a physical mark unless all voted ballots have been
 28 validated in the course of the election. All sealed ballots must
 30 remain sealed and be wrapped with tamper-proof tape. All unused
 32 ballots, including both the unsealed and the sealed ballots, must
 be placed in the containers in which the regular ballots were
 delivered. The containers containing the unused ballots must be
 clearly marked to indicate that the containers contain unused
 ballots. These ballots must be stored separately from the used
 ballots.

34 Sec. 26. 21-A MRSA §698, sub-§5, ¶A, as enacted by PL 1985, c.
 36 161, §6, is amended to read:

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

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

48 §712. Return not delivered

50 If an election return is not delivered to the Secretary of
 State within 7 3 business days after an election, the Secretary

of State must shall send a messenger to the municipality concerned, and the clerk shall give him that messenger a certified copy of the return.

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

Within a reasonable time after an election, the Governor shall issue an election certificate, in accordance with Title 5, section 84, or a notice of apparent election to each person elected to office, according to the tabulation under section 722. ~~For cases involving elections finally determined by the Governor, a certificate shall be issued under section 744, subsection 3, paragraphs B and C. For cases involving elections not finally determined by the~~ The Governor, ~~the~~ Governor shall 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.

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

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

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

§737-A. Recount

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

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2 recount except when the counting is being conducted by the
3 Secretary of State.

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

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

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

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

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

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

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

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

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

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

7 6. List of recount personnel. The Secretary of State shall
8 maintain a list of recount personnel for 2 years after the
9 recount.

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

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

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

25 9. Package resealed and marked. After a recount, the
26 Secretary of State shall reseat the packages of ballots and
27 incoming voting lists, noting the fact and date of the recount on
28 the packages. All challenged and disputed ballots must be
29 packaged separately. The challenged and disputed ballots must be
30 kept until released to the court in case of an appeal.

31 10. Appeals. For all elections, except for the Senate and
32 the House of Representatives, if there are enough challenged or
33 disputed ballots to affect the result of an election, the
34 Secretary of State shall forward the ballots and related records
35 for that election to the clerk of the Supreme Judicial Court.
36 The Supreme Judicial Court shall determine the result of the
37 election pursuant to procedures adopted by court rule. The
38 decision of the Supreme Judicial Court is final and must be
39 certified to the Governor by the Chief Justice.

40 For all elections to the Senate and the House of Representatives,
41 each House shall establish procedures for recount appeals.

42 11. Withdrawal from recount. A candidate who requests and
43 receives a recount may withdraw from the recount at any time
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2 while the recount shows that candidate to be the loser. If,
3 during the recount, the candidate requesting the recount
4 overtakes and passes the candidate who initially appeared to win
5 the election, the candidate requesting the recount may not
6 withdraw the request and the recount must be completed.

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

10 **§738. Statewide referendum ballots**

12 On petition signed by 100 or more affected voters, an
13 ~~inspection~~ and a recount may be held on any referendum question
14 by applying to the Secretary of State within the deadlines
15 deadline provided in ~~sections 736 and 737~~ section 737-A. A
16 deposit ~~shall be~~ is required if the percentage difference between
17 the yes and no votes falls within the requirements of section 737
18 737-A, subsection 2 1. Appeal of challenged or disputed ballots
19 must be ~~is~~ to the ~~Commission on Governmental Ethics and Election~~
20 ~~Practices as provided under Article IV~~ Supreme Judicial Court.

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

26 Sec. 33. 21-A MRSA §739, first ¶, as enacted by PL 1985, c.
27 161, §6, is amended to read:

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

34 Sec. 34. 21-A MRSA c. 9, sub-c. III, art. IV, as enacted by PL
35 1985, c. 161, §6, is repealed.

36 Sec. 35. 21-A MRSA §753, sub-§3, ¶B, as amended by PL 1991, c.
37 466, §29, is further amended to read:

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

41 (1) The applicant states good cause, including, but
42 not limited to, loss of, spoiling of or damage to the
43 first absentee ballot; or

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2 (2) An absentee ballot for the applicant which that
 4 was furnished to a designated 3rd person is not
 6 returned to the clerk's office within 5 2 business days
 8 of the date that ballot was sent or delivered to the
 10 3rd person or ~~of~~ the date that 3rd person was notified
 12 by the clerk that the ballot was available, or by 10
 14 a.m. on the day before election day, whichever is
 16 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.

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

20 **5. Clerk to list.** The clerk shall keep a list of the
 22 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
 24 the persons who vote in the presence of the clerk under
 subsection 7. The clerk shall submit this list to the registrar
 26 for certification before the close of business on the day before
 election day.

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

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

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

42 A. Delivers, receives, accepts, notarizes or witnesses an
 44 absentee ballot for any compensation. This paragraph does
 46 not apply to a governmental employee handling ballots in the
 48 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.

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

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.

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

28 **§860. Violation and penalty**

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

37 Sec. 41. 21-A MRSA §906, sub-§1, as enacted by PL 1985, c.
38 161, §6, is amended to read:

39 1. **Referendum questions on separate ballot.** Referendum
40 questions must be printed on a ballot separate from the general

election ballots, except for municipalities using electronic scanning devices. Two squares must be printed at the left of any referendum question submitted, with "Yes" above one and "No" 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 for the voter to designate the voter's choice.

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

§2533. Title to municipal office

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

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

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

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

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

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

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

6 **Sec. 44. 34-B MRSA §1410, sub-§4,** as amended by PL 1985, c.
7 506, Pt. A, §71, is further amended to read:

8
9 4. **Violation.** The posting of written political material
10 under this section is not a violation of Title 21-A, section 31,
11 subsection--3 32 or Title 21-A, section 674, subsection 1,
12 paragraph C.

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

15
16
17 **1993-94**

18 **SECRETARY OF STATE,**
19 **DEPARTMENT OF THE**

20
21 **Elections and Commissions**

22
23 All Other \$63,000

24
25 Provides funds for the purchase and
26 distribution of approximately 3,000 metal
27 boxes for used ballots to 676 municipalities.

28
29 **Sec. 46. Effective date.** This Act takes effect January 1, 1994.

30
31 **FISCAL NOTE**

32
33 **1993-94**

34
35 **APPROPRIATIONS/ALLOCATIONS**

36
37 General Fund \$63,000

38
39 The Department of the Secretary of State will require an
40 additional General Fund appropriation of \$63,000 in fiscal year
41 1993-94 for providing municipalities with sufficient metal boxes
42 for used ballots. This appropriation is based on the purchase
43 and distribution of approximately 3,000 boxes to 676
44 municipalities at a cost of \$21 apiece.
45
46

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

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

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

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

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

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

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

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

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

40 The additional costs to establish procedures for recount
41 appeals can be absorbed by the Legislature utilizing existing
42 budgeted resources.'

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

STATEMENT OF FACT

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This amendment removes 2 provisions that take away the right to vote of a person convicted of election tampering. It prohibits candidates from participating in election recounts. It allows candidates to be present at polling places while the polls are open. It requires the Senate and the House of Representatives to establish procedures for recount appeals. It spells out criteria to be used in determining intention to establish residence for voting purposes. It retains current law on the selection of registrars, deputy registrars, election clerks and ballot counters. The amendment also adds a fiscal note.

Filed by Rep. Gwadosky of Fairfield
Reproduced and distributed under the direction of the Clerk of the House
7/1/93 (Filing No. H-707)

HOUSE AMENDMENT