

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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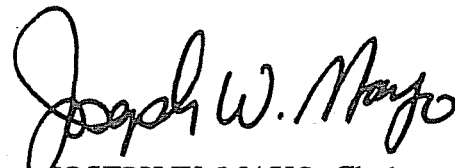
House of Representatives, May 12, 1993

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### **An Act to Amend the Laws Governing Inspection of Ballots.**

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

  
JOSEPH W. MAYO, Clerk

Presented by Representative DiPIETRO of South Portland.  
Cosponsored by Representatives: CARON of Biddeford, KERR of Old Orchard Beach, KUTASI of Bridgton, PLOURDE of Biddeford, REED of Dexter.

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

2  
4       **Sec. 1. 20-A MRSA §1202, sub-§5, ¶A**, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

6       A. Municipalities voting on the questions of district  
8       formation under Title 30-A, sections 2528 to ~~2531~~, 2531-A  
10       shall open the polls at 10 a.m. and shall close the polls at  
12       7 p.m.

14       **Sec. 2. 30-A MRSA §2102, sub-§4, ¶C**, as amended by PL 1989, c.  
16       104, Pt. C, §§8 and 10, is further amended to read:

18       C. When an original or supplementary petition has been  
20       certified insufficient, the committee, within 2 days after  
22       receiving the copy of the clerk's certificate, may file a  
24       request with the municipal officers for review.

26       The municipal officers shall inspect the petitions in  
28       substantially the same form, manner and time as a recount  
30       hearing under section ~~2531~~ 2531-A and shall make due  
32       certificate of that inspection. The municipal officers  
34       shall file a copy of that certificate with the municipal  
36       clerk and mail a copy to the committee. The certificate of  
38       the municipal officers is a final determination of the  
40       sufficiency of the petitions.

42       **Sec. 3. 30-A MRSA §2354, sub-§5**, as amended by PL 1989, c.  
44       104, Pt. C, §§8 and 10, is further amended to read:

46       **5. Inspection and recount.** Upon written application of 10%  
48       of the persons, or 100 persons, whichever is less, whose names  
50       were checked on the voting lists at any quasi-municipal  
corporation or district referendum held under this chapter, a  
ballot inspection or a recount hearing shall must be granted.  
The time limits, rules and all other matters applying to  
candidates under sections ~~2530~~ 2530-A and ~~2531~~ 2531-A apply  
equally to applicants for either the inspection or recount.

52       **Sec. 4. 30-A MRSA §2530**, as amended by PL 1989, c. 104, Pt.  
54       C, §§8 and 10, is repealed.

56       **Sec. 5. 30-A MRSA §2530-A** is enacted to read:

58       **§2530-A. Candidate's inspection of ballots and incoming voting**  
60       **lists**

62       This section governs all inspections of ballots cast in any  
64       election for municipal office. Inspection procedures for other  
66       offices do not apply to elections for municipal office.

2           Upon written application for a ballot inspection by a  
4           candidate for a municipal office received by the municipal clerk  
6           within 3 business days after the result of a city election or an  
8           election under section 2528 has been declared, the municipal  
10           clerk shall permit the candidate or the candidate's attorney,  
12           after payment of any deposit required under subsection 2, to  
14           inspect the ballots and incoming voting lists under proper  
16           protective regulations. The final day of the 3-day period ends  
18           at the close of regular business hours in the office of the  
20           municipal clerk. The purpose of this inspection must be to  
22           provide factual basis for a request for recount. A ballot  
24           inspection must be a random inspection of ballots cast. The  
26           inspection must be of reasonable duration and may not be used for  
28           harassment, assessment of ballot splitting or any other purpose  
30           not related to determining whether ballots were counted in a  
32           proper and lawful manner.

34           Any inspection of ballots and incoming voting lists is  
36           subject to the following provisions.

38           1. Notice. The inspection must be permitted only after  
40           written notice by the municipal clerk to:

42           A. The ward officers who signed the election returns in a  
44           city or the moderator in a town; and

46           B. All candidates for the office specified in the  
48           application.

50           This notice must state the time and place of the inspection and  
52           provide the persons listed in paragraphs A and B with a  
54           reasonable opportunity to be present and heard in person or to be  
56           represented by counsel.

58           2. When deposit is required. A deposit is not required if  
60           the percentage difference shown by the official tabulation is:

62           A. Two and one-half percent, if the combined vote for the 2  
64           candidates is 1,000 or less;

66           B. Two percent, if the combined vote for the 2 candidates  
68           is 1,001 to 5,000; or

70           C. One and one-half percent, if the combined vote for the 2  
72           candidates is 5,001 or over.

74           For purposes of this subsection, "percentage difference" means  
76           the difference between the percentage of the total votes for an  
78           office received by the candidate requesting a ballot inspection

2 and the percentage of the total votes for that office received by  
3 the nearest winning candidate.

4 3. Amount of deposit. The amount of the deposit must be  
5 50% of the reasonable estimate, made by the municipality, of the  
6 cost to the municipality of performing both the inspection and  
7 the recount.

8 4. Forfeiture or refund of deposit. All deposits required  
9 by this section must be made with the municipal clerk when a  
10 ballot inspection is requested. This deposit, made by the  
11 candidate requesting the ballot inspection, is forfeited to the  
12 municipality if the ballot inspection or a subsequent recount  
13 fails to change the result of the election. If a recount  
14 reverses the election, the deposit must be returned to the  
15 candidate who paid the deposit. After the completion of the  
16 ballot inspection or recount, if the inspection or recount has  
17 not reversed the election, the municipality shall calculate the  
18 actual cost of the procedure. If the deposit was greater than  
19 the actual cost, the overpayment must be refunded to the  
20 candidate. If the actual cost was greater than the deposit, the  
21 candidate shall pay the remainder of the actual cost to the  
22 municipality. Any candidate not required to pay a deposit  
23 pursuant to subsection 2 may not be charged for the inspection or  
24 recount regardless of whether the procedure changes the result of  
25 the election.

26 5. Time of inspection. The inspection must be held within  
27 5 days after the municipal clerk receives the written application.

28 6. Packages resealed. After each inspection, the municipal  
29 clerk shall reseal the packages of ballots and the incoming  
30 voting lists and shall note the fact and date of inspection on  
31 them.

32 7. Candidate defined. As used in this section and section  
33 2531-A, "candidate" means any person who has received at least  
34 one vote for the municipal office in question.

35 8. Calculation of time. The periods established in this  
36 section must be calculated according to the Maine Rules of Civil  
37 Procedure, Rule 6(a). The final day of any period calculated  
38 pursuant to this section ends at the close of regular business  
39 hours in the office of the municipal clerk. Actions required to  
40 be taken by the end of a day certain that are taken after the  
41 close of regular business hours in the office of the municipal  
42 clerk on the day certain are not timely.

43 Sec. 6. 30-A MRSA §2531, as amended by PL 1989, c. 104, Pt.  
44 C, §§8 and 10, is repealed.

2           Sec. 7. 30-A MRSA §2531-A is enacted to read:

4           §2531-A. Recount hearing

6           This section governs all recount hearings in any election  
8           for municipal office. Recount procedures for other offices do  
          not apply to elections for municipal office.

10          If a losing candidate in any election applies in writing to  
12          the municipal clerk within 5 business days after the results of  
14          an election for municipal office are declared or within 3  
16          business days after an inspection pursuant to section 2530-A, the  
18          municipal clerk shall permit the candidate or the candidate's  
          attorney to recount the ballots under proper protective  
          regulations. The final day of the periods provided in this  
          paragraph end at the close of regular business hours in the  
          office of the municipal clerk.

20          The purpose of a recount hearing is limited to counting the  
22          ballots to verify that the original count was correct or, if the  
24          original count is found to be incorrect, to certify the correct  
          result. A candidate may not request a recount for purposes of  
          harassment or other unlawful purpose.

26          Any recount pursuant to this section is subject to the  
28          following provisions.

30          1. When deposit is required. A deposit is not required if  
32          the candidate requesting the recount has already paid a deposit  
34          pursuant to an inspection under section 2530-A for the same  
          office in the same election or if the percentage difference shown  
          by the official tabulation is:

36            A. Two and one-half percent, if the combined vote for the 2  
          candidates is 1,000 or less;

38            B. Two percent, if the combined vote for the 2 candidates  
40            is 1,001 to 5,000; or

42            C. One and one-half percent, if the combined vote for the 2  
          candidates is 5,001 or over.

44          For purposes of this subsection, "percentage difference" means  
46          the difference between the percentage of the total votes for an  
48          office received by the candidate requesting a recount and the  
          percentage of the total votes for that office received by the  
          nearest winning candidate.

2        2. Amount of deposit. The amount of the deposit must be  
3        50% of the reasonable estimate, made by the municipality, of the  
4        cost to the municipality of performing both the inspection and  
5        recount.

6        3. Forfeiture or refund of deposit. All deposits required  
7        by this section must be made with the municipal clerk when a  
8        ballot inspection is requested. This deposit, made by the  
9        candidate requesting the ballot inspection, is forfeited to the  
10       municipality if the ballot inspection or recount fails to change  
11       the result of the election. If a recount reverses the election,  
12       the deposit must be returned to the candidate who paid the  
13       deposit. After the completion of the ballot inspection or  
14       recount, if the inspection or recount has not reversed the  
15       election, the municipality shall calculate the actual cost of the  
16       procedure. If the deposit was greater than the actual cost, the  
17       overpayment must be refunded to the candidate. If the actual  
18       cost was greater than the deposit, the candidate shall pay the  
19       remainder of the actual cost to the municipality. Any candidate  
20       not required to pay a deposit pursuant to subsection 1 may not be  
21       charged for the inspection or recount regardless of whether the  
22       procedure changes the result of the election.

23       4. Petition. The candidate must request the recount by  
24       filing a sworn petition within the time period provided in this  
25       section with the municipal clerk. The petition must state the  
26       office for which that person was a candidate and the reason for  
27       the recount based on the candidate's own knowledge or on  
28       information and belief.

29       5. Date of hearing and notice. When the petition has been  
30       filed, the municipal clerk shall immediately set a date for the  
31       recount hearing, which must be held within 5 business days after  
32       the petition is filed. The municipal clerk shall notify the  
33       municipal officers, the petitioner and the opposing candidates of  
34       the hearing date.  
35       the hearing date.

36       6. Procedure at recount. The procedure at the recount  
37       hearing is as follows.

38       A. The municipal clerk shall sort and count the votes under  
39       the supervision of the municipal officers who were in office  
40       immediately before the election. If the votes were  
41       originally counted by automatic tabulating equipment, the  
42       municipal clerk may use automatic tabulating equipment to  
43       recount the votes.

44       B. The municipal officers in making corrected returns, in  
45       their discretion, may accept any facts that the candidates  
46       agreed upon at the ballot inspection.  
47       agreed upon at the ballot inspection.

2 C. The petitioner or the petitioner's opponents may have  
4 all ballots in any way involved in the election and all  
6 records required by law to be kept in connection with  
8 absentee ballots displayed for counting or inspection. Upon  
10 request, absentee ballots may be segregated from other  
12 ballots.

14 D. Witnesses may be called by the candidates and may be  
16 sworn by any municipal officer. If authorized by the  
18 municipal officers, the municipality shall pay witness fees  
20 as provided in Title 16, section 251. A record must be kept  
22 if requested by any candidate.

24 E. The municipal officers shall limit their review of the  
26 election results to ensuring that valid ballots are  
28 accurately counted and may not consider other election  
30 issues at the recount hearing.

32 F. If, during the recount, the election is conceded to a  
34 candidate by a statement signed by the other interested  
36 candidates and addressed to the municipal officers, the  
38 municipal officers shall stop the recount and issue a  
40 certificate of election to the candidate whose election is  
42 conceded.

44 7. Package resealed and marked. After the recount, the  
46 municipal clerk shall reseat the packages of ballots and the  
48 incoming voting lists and shall note the fact and date of the  
50 recount on them.

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

9. Certificate of election. Within 24 hours after the  
results of a contested election are determined, the municipal  
officers shall certify the results of their count to the  
respective candidates involved and issue a certificate of  
election to the candidate whom they find to have been elected.  
This certificate of election supersedes any certificate issued  
previously.

10. Calculation of time. The periods established in this  
section must be calculated according to the Maine Rules of Civil  
Procedure, Rule 6(a). The final day of any period calculated  
pursuant to this section ends at the close of regular business



2 hours in the office of the municipal clerk. Actions required to  
3 be taken by the end of a day certain that are taken after the  
4 close of regular business hours in the office of the municipal  
5 clerk on the day certain are not timely.

6 **Sec. 8. 30-A MRSA §2532**, as amended by PL 1989, c. 104, Pt.  
7 C, §§8 and 10, is further amended to read:

8  
9 **§2532. Referendum ballot inspection and recount procedure**

10  
11 In the case of a referendum, a ballot inspection or a  
12 recount hearing shall must be granted upon written application of  
13 10% or 100, whichever is less, of the persons whose names were  
14 checked on the voting list at any town referendum or ballot  
15 question under section 2105 or 2528, or any city referendum. The  
16 time limits, rules and all other matters applying to candidates  
17 under sections 2530 2530-A and 2531 2531-A apply equally to  
18 applicants for either the inspection or recount.

19 **Sec. 9. 30-A MRSA §2556**, as amended by PL 1989, c. 104, Pt.  
20 C, §§8 and 10, is further amended to read:

21  
22 **§2556. Ballot inspection; recount; challenge for office**

23  
24 Sections 2530 2530-A to 2533 apply in a city and govern  
25 ballot inspections, recounts of elections for office, referenda  
26 and the procedure for challenging a person who claims title to an  
27 office.

28  
29 **Sec. 10. 30-A MRSA §5404, sub-§1, ¶A**, as amended by PL 1989,  
30 c. 104, Pt. C, §§8 and 10, is further amended to read:

31  
32 A. ~~Ne--revenue~~ Revenue bonds of a town, as distinguished  
33 from a city, may not be issued until the general purpose for  
34 which the bonds are to be issued and the maximum principal  
35 amount of the bonds to be authorized have been approved by  
36 ballot by a majority of the votes cast on the question. The  
37 total number of votes cast must be equal to at least 20% of  
38 the total vote for all candidates for Governor cast in the  
39 municipality at the last gubernatorial election. The ballot  
40 submitted to the voters of a town to authorize the issuance  
41 of revenue bonds shall must state the general purpose for  
42 which the proposed bonds are to be issued and the maximum  
43 principal amount of the proposed bonds authorized to be  
44 issued. The voting at meetings held in towns shall must be  
45 held and conducted in accordance with sections 2528 to 2531  
46 2531-A, even if the town has not accepted the provisions of  
47 section 2528.  
48

50

## STATEMENT OF FACT

2

This bill amends the laws concerning the inspection of  
4 ballots and incoming voting lists by candidates for municipal  
offices.