

MAINE STATE LEGISLATURE

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L.D. 1932

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LEGAL AFFAIRS

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

COMMITTEE OF CONFERENCE AMENDMENT "A" to H.P. 1418, L.D. 1932, Bill, "An Act to Reestablish a Mechanism for Review of Disputed Elections"

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Sec. 1. 21-A MRSA §737-A, sub-§10, as enacted by PL 1993, c. 473, §31 and affected by §46, is repealed and the following enacted in its place:

10. Appeal to Commission on Governmental Ethics and Election Practices. If there are enough challenged or disputed ballots to affect the result of an election, a candidate for that office may appeal to the Commission on Governmental Ethics and Election Practices, as provided in article IV-A, for a determination of the election. A written notice of the candidate's intent to appeal as provided in section 748, subsection 1 must be submitted to the Secretary of State at the close of the recount.

Sec. 2. 21-A MRSA c. 9, sub-c. III, art. IV-A is enacted to read:

Article IV-A

DETERMINATION OF DISPUTED ELECTIONS

§747. Jurisdiction

The Commission on Governmental Ethics and Election Practices, established under Title 1, section 1002 and referred to in this chapter as the "commission," shall make findings of fact and opinion on the final determination of election results

CONFERENCE AMENDMENT

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in primary, general and special elections for county, state or federal offices that are appealed.

§748. Appeal to commission

1. By candidate; election. If, after the recount proceeding provided under this Title, there are challenged or disputed ballots, or both, that affect the result of a primary, general or special election involving county, state or federal office, the commission shall make findings of fact and opinion on the validity of those ballots. Any candidate for county, state or federal office may appeal to the commission, in writing, not more than 5 days after the recount proceedings are completed. This written appeal must set forth in detail the grounds for the appeal.

2. By resident; referendum. Any resident of the State affected by the results of a statewide referendum may request an appeal in the same manner as a candidate under subsection 1.

§749. Investigations

1. Investigations. The commission may investigate and make findings of fact and issue an opinion on the final determination of the results, within the limits of the Constitution of Maine and the United States Constitution, of any contested county, state or federal election within the State. For this purpose, the commission may subpoena witnesses and records and take evidence under oath. A person who fails to obey the lawful subpoena of the commission or to testify before it under oath is subject to punishment by the Superior Court for contempt on application of the Attorney General on behalf of the commission.

2. Investigation requested. Not more than 5 days or less after the recount proceedings are completed, any candidate in a contested election may apply in writing to the commission, requesting an investigation and stating the reasons for the request. The commission shall review the application and shall make the investigation, if the reasons stated show sufficient grounds for believing that a violation of law affecting the outcome of the election has occurred.

3. State Auditor; Secretary of State. The State Auditor and the Secretary of State shall assist the commission in making investigations and in other phases of the commission's duties under this chapter and have all necessary powers to carry out these responsibilities.

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2 4. Attorney General. The Attorney General is counsel for
4 the commission and may examine any witnesses before the
6 commission.

8 §750. Procedure

10 The following procedures apply.

12 1. Notice of hearing. When a written appeal or application
14 requesting an investigation is received, the commission shall
16 notify the opposing candidate and shall set a time, date and
18 place for a hearing on the matter. This hearing must be held
20 within 15 days after the commission receives the appeal or
22 application.

24 2. Review; findings. The commission shall review the
26 matter, including a review of the contested ballots, and hold any
28 necessary hearings. When the review and hearings are completed,
30 the commission shall make findings of fact and issue an opinion
32 on the final determination of the election.

34 3. Reports. In the following instances, the commission
36 shall send copies of the findings of fact and opinions.

38 A. In cases involving elections where the Constitution of
40 Maine or the United States Constitution provides for the
42 final determination of the election of a candidate, the
44 commission shall send a copy of the findings of fact and
46 opinion to the body vested with final determination powers.

48 B. In cases involving general and special elections for
50 county office, the commission shall send a copy of the
findings of fact and opinion to the Secretary of State for
preparation and delivery to the Governor and to each
candidate and shall make its findings available to the
public. The Governor shall make the final determination in
these cases, subject to the right of appeal under section
750-B.

C. In all other cases involving primary, general and
special elections, the commission shall send a copy of the
findings of fact and opinion to the Secretary of State for
preparation and delivery to the Governor and to each
candidate and shall make its findings available to the
public. The Governor shall make the final determination in
these other cases.

D. The commission shall send copies of its findings of fact
and opinion on election contests to all parties to the
appeal of the election before the commission. These

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2 findings must be mailed to the parties by certified mail
3 within 3 days after the commission adopts the findings.

4 4. Record. The commission shall keep a public record of
5 its proceedings under this article.

6 **§750-A. Questions of law**

8
9 1. Appeals. An appeal from a final decision by the body
10 with final determinative powers under section 750 may be taken to
11 the Supreme Judicial Court on questions of law, if taken within 3
12 days of the final determination in accordance with the procedure
13 described in subsection 2.

14
15 2. Procedure. The appellant must file the required number
16 of copies of the record of the findings of fact and opinions and
17 any decision issued pursuant to the final determination made by
18 the appropriate body with the clerk of courts within 5 days after
19 filing notice of appeal. After notice of appeal is filed, the
20 parties have 10 days to file briefs with the clerk of courts. As
21 soon as the record and briefs have been filed, the court shall
22 immediately consider the case. The court may not recount the
23 ballots, but shall determine questions of law. The court shall
24 issue its decision as soon as reasonably possible. The court
25 shall allow costs to the prevailing party as justice may require.

26 **§750-B. Judicial determination of disputed county office**

27
28 A person who claims to have been elected to any county
29 office may proceed against another who claims title to the
30 office, as follows.

31
32 1. Procedure. The persons must bring a complaint in the
33 Superior Court within 15 days after the certificate of election
34 is issued. The complaint must allege the facts upon which the
35 person relies in maintaining the action. The action must be
36 brought in the county where the defendant resides. The court
37 shall hear and decide the case as soon as reasonably possible.

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

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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 the office 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 prevailing party's term begins.

4. Costs. The court shall allow costs to the prevailing party as justice may require.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

The additional costs to implement the appeal process for disputed ballots can be absorbed by the Commission on Governmental Ethics and Election Practices utilizing existing budgeted resources.

The Judicial Department will realize some minor savings from shifting the appeal process for disputed ballots to the Commission on Governmental Ethics and Election Practices.'

STATEMENT OF FACT

This is the Committee of Conference amendment. This amendment replaces the law governing determination of disputed elections, which was repealed in Public Law 1993, chapter 473.

This amendment provides that if there are sufficient challenged or disputed ballots to affect the result of an election, the candidate may appeal to the Commission on Governmental Ethics and Election Practices rather than to the Supreme Judicial Court as in current law.