

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1995

Legislative Document

No. 1588

H.P. 1149

House of Representatives, November 28, 1995

An Act to Clarify the Referendum Recount Process.

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative NADEAU of Saco.
Cosponsored by Representatives: O'GARA of Westbrook, STROUT of Corinth, Senator:
FERGUSON of Oxford.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 Whereas, current law does not adequately provide for the
event of a statewide referendum recount; and

8 Whereas, a recount on a statewide referendum has been
requested; and

10
12 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
14 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
16 safety; now, therefore,

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

20 **Sec. 1. 21-A MRSA §738**, as amended by PL 1993, c. 473, §32
and affected by §46, is repealed and the following enacted in its
22 place:

24 **§738. Statewide referendum ballots**

26 On petition signed by 100 or more affected voters, a recount
may be held on any referendum question by applying to the
Secretary of State within the deadline provided in section
737-A. The voter filing the first petition serves as the
28 contact person for the petitioning voters.

30
32 1. Deposit for recount. A deposit is required if the
percentage difference between the yes and no votes falls within
34 the requirements of section 737-A, subsection 1.

36 2. Opposing voters. Any group of voters on the opposing
side of the referendum from the petitioning voters may organize
38 by filing a petition signed by 10 or more affected voters within
5 business days of the last day for filing a request for a
40 recount. The voter filing the first petition serves as the
contact person for the opposing voters.

42 3. Recount request. The Secretary of State shall determine
which request for recount must be honored first when more than
44 one request is presented.

46 4. Notice of recount. The Secretary of State serves as the
coordinator of the recount process conducted by the
48 municipalities. The Secretary of State sets the time period for
the recount to be conducted and notifies the municipalities. The
50 Secretary of State shall send written notice of the time period

2 for the recount to be conducted by the municipalities to the
3 contact persons for the petitioning and opposing voters. A
4 notice signed by the clerk must be posted in each municipality 3
5 days in advance of the recount in that municipality.

6 5. Time of recount. The recount period must begin as soon
7 as reasonably possible.

8
9 6. Recount process. The recount in each municipality is to
10 be conducted by the election officials and supervised by the
11 municipal clerk in the same manner as the original count except
12 that:

13
14 A. Only the referendum question for which the recount has
15 been requested is to be recounted;

16
17 B. Any ballot for which the election officials can not
18 agree on the intent of the voter becomes a disputed ballot
19 and is identified and segregated from other ballots; and

20
21 C. The ballot of each voter challenged on election day
22 pursuant to the procedure in section 673 must be identified
23 and segregated from other ballots.

24
25 The municipality must provide a location for the recount large
26 enough to provide for the public to observe the counting
27 process. A guardrail must separate the public from the election
28 officials counting the ballots by a minimum of 3 feet.

29
30 7. Disputed and challenged ballots; challenge certificates;
31 list of challenged voters. The segregated disputed and
32 challenged ballots, challenge certificates and list of challenged
33 voters, if any, must be sealed separately from other ballots in
34 the event these items must be delivered to the Secretary of State
35 for a review under subsection 11.

36
37 8. Incoming voting list. In the event it must be delivered
38 to the Secretary of State for a review under subsection 11, the
39 incoming voting list must be sealed separately from other
40 election materials.

41
42 9. Recount return. The municipal clerk shall complete the
43 recount return of votes cast indicating the count of yes votes,
44 no votes and the number of disputed ballots. The recount return
45 must also indicate the total number of ballots cast by voters who
46 were challenged, pursuant to the procedure in section 673,
47 indicating the number of ballots that contain yes votes, no votes
48 and the number of ballots for which a determination of the vote
49 is in dispute. The recount return must be delivered to the
50 Secretary of State within 3 business days of the recount in that
51 municipality or the Secretary of State shall send a messenger to

2 the municipality concerned and the clerk shall give that
3 messenger a certified copy of the recount return.

4 **10. Recount tabulation.** Within 7 days after the municipal
5 recount, the Secretary of State shall tabulate the recount
6 returns. If, after the tabulation:

8 A. There are not enough disputed or challenged ballots to
9 affect the result of the election, then the recount
10 concludes and the tabulation of votes resulting from the
11 recount by the municipalities stands; or

12 B. There are enough disputed or challenged ballots to
13 affect the result of the election, then the Secretary of
14 State shall schedule a review for the petitioning and
15 opposing voters to review the disputed or challenged ballots.

16
17 **11. Review of disputed and challenged ballots.** If a review
18 is required, the Secretary of State shall arrange for the
19 disputed and challenged ballots, challenge certificates, lists of
20 challenged voters, if any, and the incoming voting lists to be
21 delivered by registered mail, return receipt requested, to the
22 State Police. They remain in the custody and control of the
23 State Police except when the review is being conducted by the
24 Secretary of State. If determined necessary by the Secretary of
25 State, the State Police shall pick up the disputed and challenged
26 ballots from selected municipalities.

27
28 The review is a public process held under the supervision of the
29 Secretary of State, who shall allow the petitioning and opposing
30 voters to review the disputed and challenged ballots and the
31 incoming voting lists. Challenge certificates and any lists of
32 challenged voters must remain sealed during the review to
33 preserve the secrecy of each voter's ballot.

34
35 Each disputed or challenged ballot is reviewed by the petitioning
36 and opposing voters and counted as a yes vote or a no vote or
37 remains in dispute. At the conclusion of the review, the newly
38 determined yes votes and no votes are added to the totals of the
39 other votes from the municipal recount to form a new tabulation
40 and the number of remaining disputed and challenged ballots is
41 determined. If, after the review:

42
43 A. There are not enough disputed or challenged ballots to
44 affect the result of the election, then the recount
45 concludes and the tabulation of votes resulting from the
46 review stands; or

47 B. There are enough disputed or challenged ballots to
48 affect the result of the election, then the remaining
49
50

2 disputed and challenged ballots, challenge certificates,
3 lists of challenged voters, if any, and the incoming voting
4 lists are forwarded to the clerk of the Supreme Judicial
5 Court.

6 12. Appeals. The Supreme Judicial Court shall determine
7 the result of the election pursuant to procedures adopted by
8 court rule. The decision of the Supreme Judicial Court is final
9 and must be certified to the Governor by the Chief Justice.

10 13. Withdrawal from recount. The petitioning voters may
11 withdraw from the recount at any time while the recount shows
12 them to be on the losing side.

13 **Sec. 2. Application.** This Act applies to all requests for a
14 statewide referendum recount that exist on the effective date of
15 this Act, except that the petition provided for under the Maine
16 Revised Statutes, Title 21-A, section 738, subsection 2 is due
17 within 5 business days of the effective date of this Act.

18 **Emergency clause.** In view of the emergency cited in the
19 preamble, this Act takes effect when approved.

20

21 STATEMENT OF FACT

22

23 This bill provides for the event of a statewide referendum
24 recount. Current law provides how a statewide referendum recount
25 is to be requested, but not how it is to be conducted. The
26 procedure outlined in this bill provides for an efficient process
27 that allows an appropriate level of scrutiny of ballots for which
28 the intent of the voter is unclear or for which the eligibility
29 of the voter to cast the ballot has been challenged.
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