

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

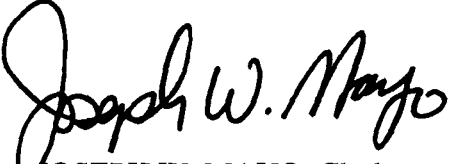
No. 1851

H.P. 1350

House of Representatives, March 13, 1996

An Act to Clarify the Process for Referendum Recount.

Reported by Representative TRUE for the Joint Standing Committee on Legal and Veterans Affairs pursuant to Public Law 1995, chapter 506, section 2.


JOSEPH W. MAYO, Clerk

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

2
4 **Sec. 1. 5 MRSA §1513, sub-§1-G** is enacted to read:

6 **1-G. Transfer for funding of referendum recount.**

7 Notwithstanding subsection 2 and section 1585, in any fiscal year
8 in which a referendum recount is conducted pursuant to Title
9 21-A, section 738, an amount not to exceed the amount necessary
10 to fund the costs of conducting the recount may be transferred
11 from the available balance in the Rainy Day Fund to the
12 Referendum Recount Fund created in Title 21-A, section 738,
13 subsection 17 and allotted by financial order, upon
14 recommendation of the State Budget Officer and approval of the
15 Governor, to be used by the Secretary of State and the
16 Commissioner of Public Safety to fund the costs of conducting the
17 referendum recount.

18 **Sec. 2. 5 MRSA §1518** is enacted to read:

20 **§1518. Transfer to the Referendum Recount Fund**

22 At the close of any fiscal year in which the Secretary of
23 State or the Department of Public Safety has incurred costs
24 associated with a referendum recount pursuant to Title 21-A,
25 section 738 that have not adequately been funded by other means,
26 including by transfers from the Rainy Day Fund pursuant to
27 section 1513, subsection 1-G, the State Controller shall transfer
28 from the unappropriated surplus of the General Fund to the
29 Referendum Recount Fund established in Title 21-A, section 738,
30 subsection 17 an amount equal to the amount recommended by the
31 State Budget Officer and approved by the Governor to be necessary
32 to adequately fund costs of conducting the referendum recount.

34 **Sec. 3. 21-A MRSA §738**, as amended by PL 1995, c. 506, §1 and
35 affected by §3, is repealed and the following enacted in its
36 place:

38 **§738. Recount of referendum**

40 The Secretary of State shall conduct a recount of a
41 referendum question if the Secretary of State receives within 7
42 business days after the official tabulation is submitted to the
43 Governor a petition signed by 100 or more affected voters
44 requesting a recount on a referendum question.

46 **1. Definitions.** For purposes of this section, unless the
47 context otherwise indicates, the following terms have the
48 following meanings.

50 A. "Agent" means a person identified pursuant to this
 section and for purposes of a referendum recount as the

2 representative of persons who signed a petition pursuant to
3 subsection 2.

4 **2. Agent.** Each separately filed petition must have an agent
5 associated with it. A petition must identify one person to serve
6 as the agent for purposes of the recount. If the petition fails
7 to identify an agent, the person who files the petition is the
8 agent for that petition for the purposes of this section.

10 **3. Limited recount.** At the request of an agent, in order to
11 facilitate an orderly recount, the Secretary of State may limit a
12 recount to those ballots cast in certain municipalities or
13 regions of the State. If, after a limited recount, there are
14 enough challenged or disputed ballots to affect the result of the
15 referendum, the Secretary of State shall complete a recount of
16 the entire return. If, after a limited recount, the results of
17 the referendum are not changed and there are not enough
18 challenged or disputed ballots to affect the result of the
19 referendum, the recount ends unless an agent requests that the
20 recount continue.

22 **4. Control of ballots; State Police.** When a recount is
23 requested, the Secretary of State shall notify the State Police,
24 who shall take physical control of ballots and related materials
25 as directed by the Secretary of State. In order to facilitate an
26 orderly recount, the Secretary of State may request the State
27 Police to take physical control of ballots and related materials
28 from certain regions of the State or in sequence from various
29 municipalities or regions of the State as the recount progresses.

30 Except when the counting is being conducted by the Secretary of
31 State and except as otherwise directed by the Secretary of State,
32 the State Police shall store and maintain exclusive control over
33 the ballots and other materials involved in the recount pending
34 and during the recount.

36 **5. Second recount.** If, after the official tabulation is
37 submitted to the Governor, the original results of the referendum
38 are reversed, affected voters may request another recount if they
39 submit a petition signed by 100 voters within 7 business days
40 after the date the Governor receives the tabulation.

42 **6. Deposit for recount.** All deposits required by this
43 section must be made with the Secretary of State when a recount
44 is requested. The agent for the first petition filed for a
45 recount is responsible for paying the deposit. Once the State
46 Police take custody of any ballots and other election materials,
47 the deposit is forfeited to the State unless the resulting count
48 reverses the outcome of the referendum. If the recount reverses
49 the outcome of the referendum, the deposit must be returned to
50

2 the person who paid the deposit. The amount of the deposit is
calculated as follows.

4 A. If the percentage difference shown by the official
tabulation between the "yes" and "no" votes is 2% or less of
6 the total votes cast on the referendum, a deposit is not
required.

8 B. If the percentage difference shown by the official
10 tabulation between the "yes" and "no" votes is more than 2%
and less than 4% of the total votes cast on the referendum,
12 the deposit is \$500.

14 C. If the percentage difference shown by the official
tabulation between the "yes" and "no" votes is 4% or more of
16 the total votes cast on the referendum, the deposit is
\$1,000.

18 7. Notice of recount. The Secretary of State shall send
20 written notice of a recount to each agent, stating the time and
place of the recount.

22 8. Time and manner of recount. The recount must be held as
24 soon as reasonably possible at a time and place that affords
agents and other interested persons a reasonable opportunity to
26 be present. An agent may designate other individuals to attend
the recount with the agent or on behalf of the agent, as long as
28 the agent provides to the Secretary of State the names and
addresses of all designees. The recount is held under the
30 supervision of the Secretary of State, who shall allow the agent
or the designees of the agent to recount the ballots.

32 9. Persons prohibited from working at recount.
34 Confidential state employees, employees of the Legislature,
candidates and elected state officials may not participate in
36 ballot recounts in any capacity. This subsection does not
prohibit employees within the Department of the Secretary of
38 State, election officials and staff of the Department of the
Attorney General and the Judicial Department from performing
40 their duties with respect to a recount.

42 10. List of recount personnel. The Secretary of State
shall maintain a list of recount personnel for 2 years after the
44 recount.

46 11. Disputed ballots segregated. At the recount, the
Secretary of State shall segregate disputed ballots. Disputed
48 ballots that are not resolved must be photocopied by a
representative of the Secretary of State. The photocopy of the

2 ballot is not a public record and must be kept separate from the
3 original ballots.

4 12. Mistake in ballot count. If it is found that a mistake
5 was made in counting the ballots on election day, the Secretary
6 of State shall submit a corrected tabulation to the Governor.

8 13. Package resealed and marked. After a recount, the
9 Secretary of State shall reseal the packages of ballots and
10 incoming voting lists, noting the fact and date of the recount on
11 the packages. All challenged and disputed ballots must be
12 packaged separately. The challenged and disputed ballots must be
13 kept until released to the Supreme Judicial Court in case of an
14 appeal.

16 14. Supreme Judicial Court determination. If there are
17 enough challenged or disputed ballots to affect the result of the
18 referendum, the Secretary of State shall forward the ballots and
19 related records for that referendum to the clerk of the Supreme
20 Judicial Court. The Supreme Judicial Court shall determine the
21 result of the referendum pursuant to procedures adopted by court
22 rule. The decision of the Supreme Judicial Court is final and
23 must be certified to the Governor by the Chief Justice of the
24 Supreme Judicial Court.

26 15. Withdrawal from recount. An agent may withdraw from
27 the recount at any time while the recount shows that the results
28 of the referendum are not changed. If agents for all filed
29 petitions withdraw, the Secretary of State may end the recount.
30 If, during the recount, the results of the referendum change, the
31 recount must be completed.

32 16. Rulemaking. The Secretary of State may adopt rules
33 consistent with this section in order to ensure that referendum
34 recounts are conducted in an orderly and fair manner. Rules
35 adopted pursuant to this subsection are major substantive rules
36 as defined in Title 5, chapter 375, subchapter II-A.

38 17. Costs of referendum recount; Referendum Recount Fund.
39 The Referendum Recount Fund is established in which must be
40 deposited any funds transferred from the Rainy Day Fund and from
41 unappropriated surplus pursuant to Title 5, section 1513,
42 subsection 1-G and Title 5, section 1518 to be used by the
43 Secretary of State and the Commissioner of Public Safety for
44 paying the costs of conducting a referendum recount under this
45 section.

48 FISCAL NOTE

50 This bill may result in future reductions of balances in the
51 Rainy Day Fund or the unappropriated surplus of the General Fund
52 in the event of a referendum recount. The amounts and timing of

2 the amounts transferred to the Referendum Recount Fund from the
3 Rainy Day Fund or, if necessary, the unappropriated surplus of
4 the General Fund can not be determined at this time. The total
5 costs of a recount of a statewide referendum incurred by the
6 Department of the Secretary of State and the Department of Public
7 Safety that are eligible to be funded from the Referendum Recount
8 Fund may be as much as \$90,000. However, this bill may also
9 reduce the costs of statewide referendum recounts by authorizing
10 the Secretary of State to conduct them in stages.

11 The Department of the Secretary of State will incur some
12 minor additional costs to adopt rules. These costs can be
13 absorbed within the Department of the Secretary of State's
14 existing budgeted resources.

16 STATEMENT OF FACT

17 This bill, which is reported by the Joint Standing Committee
18 on Legal and Veterans' Affairs pursuant to Public Law 1995,
19 chapter 506, section 2, clarifies the law relating to referendum
20 recounts.
21

22 Under current law, referendum recounts are required to be
23 conducted in accordance with the law related to election
24 recounts. The application of several provisions of the election
25 recount law is unclear in the context of referendum recounts due
26 to the different nature of referendum recounts. This bill
27 recasts the election recount process in the context of referendum
28 recounts to clarify the various procedural requirements.
29

30 This bill also specifies that for a referendum recount,
31 agents of persons petitioning for a recount can request that the
32 recount initially be limited to certain regions or areas of the
33 State.
34

35 This bill also provides that the Secretary of State may
36 conduct a recount in stages and direct the State Police to take
37 physical control over ballots in a sequence or order that
38 facilitates the orderly recount of the ballots.
39

40 Currently, the costs of conducting a referendum recount are
41 not budgeted since the costs are speculative until a recount is
42 actually requested and conducted. A full statewide recount could
43 cost more than can reasonably be absorbed by the Department of
44 the Secretary of State or the Department of Public Safety. This
45 bill provides that the costs of conducting a referendum recount
46 are paid from the Rainy Day Fund and, to the extent necessary,
47 from the unappropriated surplus of the General Fund.
48
49
50

2 This bill also provides that rules adopted by the Secretary
of State regarding referendum recounts are major substantive
4 rules under the Maine Administrative Procedure Act.
Consequently, all rules adopted on referendum recounts will
6 require Legislative review before becoming effective.

 This bill includes a fiscal note.