MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND REGULAR SESSION-2004

An Act To Ensure the Accurate Counting of Votes

Millicent M. MacFarland

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Clerk

Presented by Representative PINGREE of North Haven.
Cosponsored by Senator MAYO of Sagadahoc and
Representatives: BOWEN of Rockport, Speaker COLWELL of Gardiner, ROSEN of Bucksport, SMITH of Monmouth, Senators: BENNETT of Oxford, President DAGGETT of Kennebec, GAGNON of Kennebec, TREAT of Kennebec.

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

Sec. 1. 21-A MRSA §607, sub-§6 is enacted to read:

6. Electronically produced and electronically counted ballots. The official ballot box for electronically produced or electronically counted ballots must be separate from the one used to receive provisional ballots as defined in section 808 and must be clearly marked as such.

Sec. 2. 21-A MRSA §737-B is enacted to read:

§737-B. Recount functions and costs

1. Random recount. At the discretion of the Secretary of State any election may be followed within 120 hours of polls closing by a random statewide selection of up to 2% of individual voting places that use voting machines for a manual vote recount to audit the voting machines' accuracy. These recounts must be performed immediately following any recounts pursuant to section 737-A. Random recounts must use the ballots produced by machine tabulation and must be performed by volunteer teams organized and trained specifically for random recounts by the Office of the Secretary of State. Such teams must consist of enrolled and unenrolled registered voters, in proportion to the percentages, by party and nonparty affiliation, of voter enrollment registered in the previous election cycle. Random recounts must be open to public observation. The recounted vote totals for these sample precincts must serve as the final tally for those precincts.

2. Recount trigger. If there is any discrepancy between a machine tally and the recount tally conducted pursuant to subsection 1 that is greater than .1% and that can not be accounted for by voter error or ambiguity of voter intent, that discrepancy may trigger further manual recounts at the discretion of the Secretary of State from voting places that employ the same machine type as that voting place. If more than 2 such recounts are instituted, all like machines in the State must be recounted. Recounts must proceed without delay upon being so triggered and ordered. The recounted vote totals for triggered recounts must also serve as the final tally for those machines.

3. Statistical analysis of recount results; recounts. Before the ballots associated with any election are discarded, the office of the Secretary of State may undertake a statistical analysis of all recount discrepancies discovered by random recount or otherwise in any election. Such analyses, if undertaken, must be published for public scrutiny 4 weeks prior to any ballot disposal order by the Secretary of State. Further recounts for any election may be instituted by order of the

Secretary of State upon the secretary's determination that such recounts are warranted by virtue of any statistical anomalies that the analyses performed pursuant to this subsection may have discovered. Such a recount process must be accompanied by a warrant issued by the Attorney General at the behest of the Secretary of State.

4. Recount costs. The State shall attempt to recover from the vendor or manufacturer of voting machines costs to the State and municipalities for any recount that has been triggered by a discrepancy in a random recount under subsection 1, unless the cause of the discrepancy is shown to be due to negligence or malfeasance on the part of state agents or employees. All contracts between the State and voting machine vendors and manufacturers must incorporate the provisions of this subsection. Reimbursement for the costs of random recounts that do not result in such discrepancies may be sought from funds available from the federal Help America Vote Act of 2002, Public Law 107-252.

Sec. 3. 21-A MRSA §808, sub-§5-A is enacted to read:

5-A. Direct recording electronic voting machine. "Direct recording electronic voting machine" means a switch-operated or lever-operated electronic voting machine that records a voter's choices electronically into a counting mechanism that tallies the votes without using a physical ballot.

Sec. 4. 21-A MRSA §808, sub-§§8-A to 8-D are enacted to read:

8-A. Mechanical lever voting machine. "Mechanical lever voting machine" means a machine that directly records a voter's choices via mechanical lever-actuated controls into a counting mechanism that tallies the votes without using a physical ballot.

8-B. Provisional ballot. "Provisional ballot" means a hand-cast and hand-counted ballot that is used either when a challenged ballot occurs or when a voter chooses to cast such a ballot in lieu of using a voting machine.

8-C. Punch card voting machine. "Punch card voting machine" means a machine that transmits a voter's choices onto either a prescored or unscored ballot via mechanically punched holes that are then read and tallied by the machine.

8-D. Touch screen voting machine. "Touch screen voting machine" means a machine that utilizes a computer screen whereby a voter executes that voter's choices by touching designated

locations on the screen and that then tabulates those choices and
2 produces a paper ballot.

4 **Sec. 5. 21-A MRSA §§831 and 832** are enacted to read:

6 **§831. Voting machine standards**

8 All voting machines used in any election in this State must
conform to the following standards.
10

1. General. The mechanisms and computer software by which
12 any voting machine tabulates, transmits or stores the votes must
be fully accessible to the Office of the Secretary of State and
14 agents of that office. Any computer software relating to such
voting machines must employ an open-source operating code that is
16 fully accessible to the Office of the Secretary of State and
agents of that office. Appropriate encryption software for
18 voting machines must be incorporated and used to prevent any
unauthorized access while allowing full access by authorized
20 agents and employees of the State. Any instance of work or
inspections done to any voting machine in the State must be
22 entered into a permanent log attached to that machine, with
copies of the log sent to the Office of the Secretary of State,
24 Bureau of Corporations, Elections and Commissions on a monthly
basis. Such a log is a public record for purposes of Title 1,
26 chapter 13.

28 **2. Ballots.** All voting machines in the State must produce
a physical ballot, equivalent or superior to that of a hand-cast
30 ballot, that unambiguously reflects the intent of the voter and
that each voter shall personally review and deliver to an
32 official ballot box. Touch screen voting machines must produce a
legible, large-print ballot for verification by each voter of
34 that voter's electoral choices before it is placed in the
official ballot box. Each such ballot must also identify the
36 individual machine that produced it while not identifying the
voter.
38

A. Ballots may be an optional feature only of machines
40 dedicated to accommodate the needs of sight-impaired voters
or other voters with disabilities for whom wardens determine
42 usage of ballot-free voting is appropriate. The option of
using a ballot-free function on a touch screen machine may
44 be executed only by a warden on duty at an individual voting
place upon request of a voter with a disability and only on
46 a machine dedicated for access by voters with disabilities.
A total count of such ballot-free uses on dedicated voting
48 machines, which must be compiled so as to maintain complete
voter anonymity, must be kept at each voting district and

transmitted to the Office of the Secretary of State along with the election results.

B. Each voting district that uses voting machines of any type must have on hand sufficient provisional ballots to accommodate any voter whose eligibility to vote is challenged as well as any voter who chooses to cast a hand-counted ballot in lieu of a machine-cast or machine-tabulated vote. A voter who chooses a provisional ballot is not required to provide justification for that choice.

C. If a voter detects a discrepancy in a ballot produced by a touch screen voting machine, that voter must be directed, by instructions clearly posted adjacent to the machine, to call the discrepancy to the attention of election officials on duty, who shall place the ballot in a designated envelope and note it in a spoiled-ballot log. The voter must then be allowed to fill out a provisional ballot or to use another machine. The spoiled ballots must be counted at the conclusion of the voting day, and the totals must be deducted from the vote totals for that voting district. If any machine is associated with 5 such discrepancies in a given election day, that machine must be immediately taken out of service and impounded, and all ballots associated with that machine must, at the conclusion of the vote, be segregated from the rest of the ballots and subjected to a hand recount to compare with the tally of the machine in question. That recount must serve as the final tally for votes cast on that machine.

3. Proscribed voting machines. The following types of voting machines may not be used in the conduct of state elections:

A. Direct recording electronic voting machines;

B. Punch card voting machines;

C. Mechanical lever voting machines; and

D. Any machine that does not produce a paper ballot except as provided in subsection 2, paragraph A.

§832. Certain electronic connections and Internet voting prohibited

Connection of any voting district via the Internet to central vote collection equipment may not be employed by the State. Any network of machines in an individual voting place may not be Internet enabled. Vote totals for each voting place, notwithstanding the method of voting, must be transmitted to the

2 Office of the Secretary of State, Bureau of Corporations, Elections and Commissions via either United States mail or facsimile. Use of the Internet for the casting of votes online
4 is prohibited.

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SUMMARY

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10 This bill sets standards for voting machines and provides that each statewide election may be followed within 120 hours of the closing of polls by a manual vote recount of up to 2% of
12 voting places that use voting machines, selected at random, to be performed as an audit of the accuracy of the machines. The bill
14 prohibits the connection of any voting district via the Internet to central vote collection equipment and prohibits the use of the
16 Internet for the casting of votes online.