

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

---

Legislative Document

No. 1514

H.P. 1059

House of Representatives, March 30, 2005

### An Act To Enhance the Transparency of Maine's Elections

---

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative PINGREE of North Haven.  
Cosponsored by President EDMONDS of Cumberland and  
Representatives: CANAVAN of Waterville, CUMMINGS of Portland, PATRICK of Rumford,  
SCHATZ of Blue Hill, TRAHAN of Waldoboro, WALCOTT of Lewiston, WEBSTER of  
Freeport, Senator: DAMON of Hancock.

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

4 **Sec. 1. 21-A MRSA §737-B** is enacted to read:

6 **§737-B. Random sample recounts for the purpose of auditing  
voting machinery**

8 **1. Random sample recount.** Following each election in an  
10 even-numbered year, the Secretary of State shall randomly select,  
12 by means of a ping-pong-ball-style lottery, a sample of .05% of  
14 all voting machines used in state elections for a manual vote  
16 recount to audit the machines' accuracy and performance. These  
recounts must be performed on November 11th, unless that date  
falls on a Saturday or Sunday, in which case the recount must  
take place on the first Monday following November 11th. Recounts  
must be performed pursuant to the requirements of section 737-A  
and must:

18 A. Use the ballots produced or employed by machine  
20 tabulation;

22 B. Be held in the offices of the Secretary of State in  
24 Augusta or at a similarly situated central location as the  
Secretary of State designates before the recount;

26 C. Be performed by volunteer teams of notaries duly  
28 authorized by the State who are organized and trained  
30 specifically for random sample recounts by the Office of the  
32 Secretary of State. The 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;

34 D. Be open to public observation; and

36 E. Serve as the final tally for the voting locations  
38 involved.

40 **2. Escalating recount trigger.** If there is a discrepancy  
42 in any race greater than .01% between a machine tally and the  
44 recount tally conducted pursuant to subsection 1 that cannot be  
46 accounted for by voter error or ambiguity of voter intent, a  
48 further manual recount of the vote tally of an additional 1%  
50 random sample of machines from voting places that employ the same  
machine type as the discrepant machine must be conducted as  
described in subsection 1. If more than 2 recounts are triggered  
pursuant to the requirements of this subsection, all vote totals  
by machines of the same type as those found to be discrepant must  
be recounted. Recounts must proceed without delay. The recounted  
vote totals for triggered recounts serve as the final tally for  
those machines.

2           3. Statistical analysis of recount results. Before the  
4 ballots associated with any election are discarded, the Office of  
the Secretary of State shall undertake a statistical analysis of  
6 all recount discrepancies discovered by random sample recounts or  
by candidate-initiated recounts. This analysis must be published  
8 for public scrutiny 4 months prior to the disposal of any ballots  
as ordered by the Secretary of State. Further recounts for any  
10 election may be instituted by order of the Secretary of State  
upon the Secretary of State's determination that such recounts  
12 are warranted by virtue of any statistical anomalies that the  
analysis performed pursuant to this subsection may have  
14 discovered. Prior to conducting a recount pursuant to this  
subsection, the Secretary of State must obtain a warrant issued  
16 by the Attorney General.

18           4. Recount costs. The Office of the Secretary of State,  
Bureau of Corporations, Elections and Commissions, Elections  
20 Division must be reimbursed for the costs associated with  
recounts performed pursuant to this section as specified in this  
22 subsection.

24           A. Costs associated with recounts conducted pursuant to  
subsection 1 or 3 must be reimbursed using funds from the  
26 fund.

28           B. Costs associated with recounts conducted pursuant to  
subsection 2 must be recovered from the vendor or  
30 manufacturer of the voting machines involved in those  
recounts unless the cause of the discrepancy is shown to be  
32 due to negligence or malfeasance on the part of state  
employees, in which case the costs must be borne by the  
34 State. All contracts between the State and voting machine  
vendors and manufacturers must contain provisions stating  
36 the requirements of this paragraph.

38           C. Notwithstanding the provisions of subsections 1, 2 and  
3, if the amount of money in the fund is inadequate to  
40 offset the costs of implementing a recount under subsection  
1 or 3, the recount procedures of this section must be  
42 temporarily limited to those for which there is sufficient  
funding. Recounts conducted pursuant to subsection 1 have  
44 priority over recounts required pursuant to subsection 3.

46           5. Maine Electoral Transparency Fund. The Maine Electoral  
Transparency Fund, referred to in this section as "the fund," is  
48 established to finance recounts and auditing of voting machines  
pursuant to this section. The fund is a special, dedicated,

2 nonlapsing fund, and any interest generated by the fund is  
3 credited to the fund. The Secretary of State shall administer the  
4 fund.

6 A. The fund receives revenue from the tax checkoff  
7 established in Title 36, section 5289, allowing a resident  
8 of the State who files a tax return with the State Tax  
9 Assessor to contribute 25¢ to the fund. If a husband and  
10 wife file a joint return, each spouse may designate that 25¢  
11 be paid. The State Tax Assessor shall report annually the  
12 amounts designated for the fund to the State Controller, who  
13 shall transfer that amount to the fund.

14 B. In addition to the contribution described in paragraph  
15 A, the fund may receive other voluntary contributions. Any  
16 contributions received pursuant to this paragraph may be  
17 used only for the purposes of subsection 1 and may not be  
18 transferred to the General Fund.

20 C. If the fund, for any 2 consecutive election cycles,  
21 produces a surplus of more than 100% of the previous cycles'  
22 expenses related to subsections 1 and 3, then 50% of that  
23 surplus may be assigned, at the Secretary of State's  
24 discretion, to the operating budget of the Office of the  
25 Secretary of State, Bureau of Corporations, Elections and  
26 Commissions, Elections Division for that year.

28 **Sec. 2. 36 MRSA §5289 is enacted to read:**

30 **§5289. Contribution to Maine Electoral Transparency Fund;**  
31 **voluntary checkoff**

32 **1. Designation.** Resident taxpayers may designate that 25¢  
33 of their taxes be deposited in the Maine Electoral Transparency  
34 Fund in accordance with Title 21-A, section 737-B, subsection 5.

36 **2. Forms.** The State Tax Assessor shall provide on the  
37 first page of the income tax form a space for the filing  
38 individual to indicate whether that filer wishes to pay 25¢, or  
39 50¢ if filing a joint return, from the General Fund to finance  
40 the Maine Electoral Transparency Fund created in Title 21-A,  
41 section 737-B, subsection 5.

42 **3. Transfer of funds.** The State Tax Assessor shall  
43 transfer funds pursuant to this section from the General Fund in  
44 accordance with Title 21-A, section 1124.  
45

48

## SUMMARY

2

4       This bill establishes a procedure for regular scientific  
6       audits of the State's election machinery on a biennial basis, by  
8       means of manually recounting the ballots of a random sample of  
10       all voting machines in the State. The bill also establishes an  
12       escalating recount procedure in the event that unacceptable  
14       discrepancies are discovered during the random sample recount  
16       process, and it mandates the regular statistical analysis of  
      those discrepancies. This bill establishes the Maine Electoral  
      Transparency Fund to provide reimbursement for costs incurred in  
      performing the recounts. Resources of the fund come from an  
      income tax checkoff and voluntary contributions. Contingencies  
      for shortages and surpluses in the fund are also addressed.

16