

# 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)



# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

---

Legislative Document

No. 1150

H.P. 843

House of Representatives, March 7, 2007

### An Act To Establish Random Audits of Voting Machines

---

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: CAIN of Orono, CRAVEN of Lewiston, Speaker CUMMINGS of Portland,  
FAIRCLOTH of Bangor, FISCHER of Presque Isle, VALENTINO of Saco, WEBSTER of  
Freeport.

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

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

3 **§737-B. Random sample recounts for the purpose of auditing voting machinery**

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

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

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

14 C. Be performed by volunteer teams of notaries duly authorized by the State who are  
15 organized and trained specifically for random sample recounts by the Secretary of  
16 State. The teams must consist of enrolled and unenrolled registered voters in  
17 proportion to the percentages, by party and nonparty affiliation, of voter enrollment  
18 registered in the previous election cycle;

19 D. Be open to public observation; and

20 E. Serve as the final tally for the voting locations involved.

21 **2. Escalating recount trigger.** If a recount indicates a discrepancy greater than  
22 .01% between a machine tally and the recount tally conducted pursuant to subsection 1  
23 that cannot be accounted for by voter error or ambiguity of voter intent, a further manual  
24 recount of the vote tally of an additional 1% random sample of machines from voting  
25 places that employ the same machine type as the discrepant machine must be conducted  
26 as described in subsection 1. If more than 2 recounts are triggered pursuant to the  
27 requirements of this subsection, all vote totals by machines of the same type as those  
28 found to be discrepant must be recounted. Recounts must proceed without delay. The  
29 recounted vote totals for triggered recounts serve as the final tally for those machines.

30 **3. Statistical analysis of recount results.** Before the ballots associated with any  
31 election are discarded, the Secretary of State shall undertake a statistical analysis of all  
32 recount discrepancies discovered by random sample recounts or by candidate-initiated  
33 recounts. This analysis must be published for public scrutiny 4 months prior to the  
34 disposal of any ballots as ordered by the Secretary of State. Further recounts for any  
35 election may be instituted by order of the Secretary of State upon the Secretary of State's  
36 determination that such recounts are warranted by virtue of any statistical anomalies that  
37 the analysis performed pursuant to this subsection may have discovered. Prior to  
38 conducting a recount pursuant to this subsection, the Secretary of State must obtain a  
39 warrant issued by the Attorney General.

1       **4. Recount costs.** The Department of Secretary of State, Bureau of Corporations,  
2 Elections and Commissions, Elections Division must be reimbursed for the costs  
3 associated with recounts performed pursuant to this section as specified in this  
4 subsection.

5       A. Costs associated with recounts conducted pursuant to subsection 1 or 3 must be  
6 reimbursed using funds from the fund established in subsection 5.

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

13       C. Notwithstanding the provisions of subsections 1, 2 and 3, if the amount of money  
14 in the fund established in subsection 5 is inadequate to offset the costs of  
15 implementing a recount under subsection 1 or 3, the recount procedures of this  
16 section must be temporarily limited to those for which there is sufficient funding.  
17 Recounts conducted pursuant to subsection 1 have priority over recounts required  
18 pursuant to subsection 3.

19       **5. Maine Electoral Transparency Fund.** The Maine Electoral Transparency Fund,  
20 referred to in this section as "the fund," is established to finance recounts and auditing of  
21 voting machines pursuant to this section. The fund is a special, dedicated, nonlapsing  
22 fund, and any interest generated by the fund is credited to the fund. The Secretary of  
23 State shall administer the fund.

24       A. The fund receives revenue from the tax checkoff established in Title 36, section  
25 5291, allowing a resident of the State who files a tax return with the State Tax  
26 Assessor to contribute 25¢ to the fund. If a husband and wife file a joint return, each  
27 spouse may designate that 25¢ be paid. The State Tax Assessor shall report annually  
28 the amounts designated for the fund to the State Controller, who shall transfer that  
29 amount to the fund.

30       B. In addition to the contributions described in paragraph A, the fund may receive  
31 other voluntary contributions. Any contributions received pursuant to this paragraph  
32 may be used only for the purposes of subsection 1 and may not be transferred to the  
33 General Fund.

34       C. If the fund, for any 2 consecutive election cycles, produces a surplus of more than  
35 100% of the previous cycle's expenses related to subsections 1 and 3, then 50% of  
36 that surplus may be assigned, at the Secretary of State's discretion, to the operating  
37 budget of the Department of Secretary of State, Bureau of Corporations, Elections  
38 and Commissions, Elections Division for that year.

39       **Sec. 2. 36 MRSA §5291** is enacted to read:

1 **§5291. Contribution to Maine Electoral Transparency Fund; voluntary checkoff**

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

5 **2. Forms.** The State Tax Assessor shall provide on the first page of the income tax  
6 form a space for the filing individual to indicate whether that filer wishes to pay 25¢, or  
7 50¢ if filing a joint return, from the General Fund to finance the Maine Electoral  
8 Transparency Fund created in Title 21-A, section 737-B, subsection 5.

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

11 **SUMMARY**

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