

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1321

H.P. 967

House of Representatives, March 28, 2011

**RESOLUTION, Proposing an Amendment to the Constitution of
Maine To Allow for the Appointment of County Sheriffs, Judges
and Registers of Probate**

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative STRANG BURGESS of Cumberland.
Cosponsored by Senator WOODBURY of Cumberland and
Representative: GRAHAM of North Yarmouth.

1 **Constitutional amendment. Resolved:** Two thirds of each branch of the
2 Legislature concurring, that the following amendment to the Constitution of Maine be
3 proposed:

4 **Constitution, Art. VI, §6** is amended to read:

5 **Section 6. Judges and registers of probate, election and tenure; vacancies.**
6 Judges Except as provided in Section 7, judges and registers of probate shall be elected
7 by the people of their respective counties, by a plurality of the votes given in, at the
8 biennial election on the Tuesday following the first Monday of November, and shall hold
9 their offices for 4 years, commencing on the first day of January next after their election.
10 Vacancies occurring in said offices by death, resignation or otherwise, shall be filled by
11 election in manner aforesaid at the November election, next after their occurrence; and in
12 the meantime, the Governor may fill said vacancies by appointment, and the persons so
13 appointed shall hold their offices until the first day of January next after the election
14 aforesaid.

15 **Constitution, Art. VI, §7** is enacted to read:

16 **Section 7. Appointment of judges and registers of probate; tenure;**
17 **vacancies.** In a county with a county charter legally in effect that determines the
18 structure of county government, the county commissioners of that county may appoint the
19 judges and registers of probate for that county. Judges and registers of probate appointed
20 pursuant to this section hold their offices for 4 years. If a vacancy occurs in those offices
21 by death, resignation or otherwise, the county commissioners shall fill that vacancy by
22 appointment for the remainder of the term of the person who vacated the office.

23 **Constitution, Art. IX, §10** is amended to read:

24 **Section 10. Tenure of sheriffs.** Sheriffs shall be elected by the people of their
25 respective counties, by a plurality of the votes given in on the Tuesday following the first
26 Monday of November, and shall hold their offices for 4 years from the first day of
27 January next after their election, unless sooner removed as hereinafter provided; except
28 that, in a county with a county charter legally in effect that determines the structure of
29 county government, the county commissioners of that county may appoint the sheriff,
30 who shall hold the office for 4 years.

31 **Removal of sheriffs from office and replacement.** Whenever the Governor upon
32 complaint, due notice and hearing shall find that a an elected sheriff is not faithfully or
33 efficiently performing any duty imposed upon the sheriff by law, the Governor may
34 remove such sheriff from office and appoint another sheriff to serve for the remainder of
35 the term for which such removed sheriff was elected. Whenever the county
36 commissioners in a county in which the sheriff was appointed by the county
37 commissioners, upon complaint, due notice and hearing, find that a sheriff is not
38 faithfully or efficiently performing any duty imposed upon the sheriff by law, the county
39 commissioners may remove such sheriff from office and appoint another sheriff to serve
40 for the remainder of the term for which such removed sheriff was appointed. All
41 vacancies in the office of sheriff, other than those caused by removal in the manner

1 aforesaid shall be filled in the same manner, either election or appointment, as is provided
2 in that county in the case of judges and registers of probate.

3 ; and be it further

4 **Constitutional referendum procedure; form of question; effective date.**

5 **Resolved:** That the municipal officers of this State shall notify the inhabitants of their
6 respective cities, towns and plantations to meet, in the manner prescribed by law for
7 holding a statewide election, at a statewide election held in the month of November
8 following the passage of this resolution, to vote upon the ratification of the amendment
9 proposed in this resolution by voting upon the following question:

10 "Do you favor amending the Constitution of Maine to allow for the
11 appointment of judges of probate, registers of probate and sheriffs by the
12 county commissioners in a county with a county charter in effect?"

13 The legal voters of each city, town and plantation shall vote by ballot on this question
14 and designate their choice by a cross or check mark placed within the corresponding
15 square below the word "Yes" or "No." The ballots must be received, sorted, counted and
16 declared in open ward, town and plantation meetings and returns made to the Secretary of
17 State in the same manner as votes for members of the Legislature. The Governor shall
18 review the returns. If it appears that a majority of the legal votes are cast in favor of the
19 amendment, the Governor shall proclaim that fact without delay and the amendment
20 becomes part of the Constitution of Maine on the date of the proclamation; and be it
21 further

22 **Secretary of State shall prepare ballots. Resolved:** That the Secretary of State
23 shall prepare and furnish to each city, town and plantation all ballots, returns and copies
24 of this resolution necessary to carry out the purposes of this referendum.

25 **SUMMARY**

26 This resolution proposes to amend the Constitution of Maine to allow a county with a
27 county charter that includes a provision for the county commissioners to appoint judges
28 of probate, registers of probate and sheriffs. It does not change the requirement for these
29 positions to be elected if the county has not adopted a charter or has adopted a charter that
30 does not provide for the appointment of these positions.

31 Resolve 1967, chapter 77 repealed the Constitution of Maine, Article VI, Section 6,
32 regarding the election of judges and registers of probate, contingent upon the
33 Legislature's enactment of a different Probate Court system with full-time judges. That
34 contingency has not occurred, allowing for this amendment.