

# MAINE STATE LEGISLATURE

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Date: 5/10/17

VETERANS AND LEGAL AFFAIRS

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
128TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 230, L.D. 297, Bill, "An Act To Improve the Administration of Election Recounts"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 21-A MRSA §696, sub-§2, ¶E, as amended by PL 2009, c. 253, §32, is further amended to read:

E. If a voter writes in a write-in space the name of a person who has not filed a declaration of write-in candidacy as provided by section 722-A, the vote for that office may not be counted ~~except in accordance with section 737-A, subsection 2-A.~~

Sec. 2. 21-A MRSA §722, sub-§1, as amended by IB 2015, c. 3, §4, is further amended to read:

1. **How tabulated.** The Secretary of State shall tabulate all votes that appear by an election return to have been cast for each question or candidate whose name appeared on the ballot. For offices elected by ranked-choice voting, the Secretary of State shall tabulate the votes according to the ranked-choice voting method described in section 723-A. The Secretary of State shall tabulate the votes that appear by an election return to have been cast for a declared write-in candidate ~~and shall tabulate the votes that appear to have been cast for an undeclared write-in candidate~~ based on a recount requested and conducted pursuant to section 737-A, subsection 2-A.

Sec. 3. 21-A MRSA §737-A, first ¶, as amended by PL 2015, c. 447, §27, is further amended to read:

Once a recount is requested for an election for the office of State Senator or State Representative or for a county office that does not encompass more than one county, the Secretary of State shall notify the State Police, who shall take physical control of all ballots and related materials involved in the recount as soon as possible, ~~except that, when a recount is requested for a statewide office or congressional office or statewide referendum or an office or referendum for a county office that encompasses more than one county, the Secretary of State, in agreement with the parties involved in the recount,~~

COMMITTEE AMENDMENT

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1 may direct the State Police to retrieve ballots from certain voting jurisdictions so that the  
2 recount may be conducted in stages until the requesting candidate or the lead applicant  
3 for a referendum recount concedes or until all the ballots are recounted.

4 **Sec. 4. 21-A MRSA §737-A, sub-§1**, as amended by PL 2015, c. 447, §29, is  
5 further amended to read:

6 **1. Deposit for legislative or single county office recount.** This subsection applies  
7 to a recount for an election for the office of State Senator or State Representative or for a  
8 county office that does not encompass more than one county. All deposits required by  
9 this section must be made with the Secretary of State when a recount is requested by a  
10 losing candidate or an undeclared write-in candidate. Once the State Police have taken  
11 custody of the ballots and other election materials from the municipalities, the deposit  
12 made by the candidate requesting the recount is forfeited to the State if the resulting count  
13 fails to change the outcome of the election. If the recount reverses the election, the  
14 deposit must be returned to the candidate requesting the recount. The amount of the  
15 deposit is calculated as follows.

16 A. If the percentage difference shown by the official tabulation between the leading  
17 candidate and the requesting candidate is 1.5% or less of the total votes cast for that  
18 office, a deposit is not required.

19 B. If the percentage difference shown by the official tabulation between the leading  
20 candidate and the requesting candidate is more than 1.5% and less than or equal to  
21 4% of the total votes cast for that office, the deposit is \$500.

22 C. If the percentage difference shown by the official tabulation between the leading  
23 candidate and the requesting candidate is more than 4% and less than or equal to 6%  
24 of the total votes cast for that office, the deposit is \$1,000.

25 D. If the percentage difference shown by the official tabulation between the leading  
26 candidate and the requesting candidate is more than 6% and less than or equal to 8%  
27 of the total votes cast for that office, the deposit is \$2,500.

28 E. If the percentage difference shown by the official tabulation between the leading  
29 candidate and the requesting candidate is more than 8% and less than or equal to 10%  
30 of the total votes cast for that office, the deposit is \$5,000.

31 F. If the percentage difference shown by the official tabulation between the leading  
32 candidate and the requesting candidate is more than 10% of the total votes cast for  
33 that office, the deposit is \$10,000.

34 **Sec. 5. 21-A MRSA §737-A, sub-§1-A** is enacted to read:

35 **1-A. Deposit for statewide or multicounty office recount.** This subsection applies  
36 to a recount for an office not described by subsection 1. A losing candidate who requests  
37 a recount must pay the deposit required by this subsection when the recount is requested.  
38 The amount of the deposit is calculated as follows.

39 A. If the difference shown by the official tabulation between the leading candidate  
40 and the requesting candidate is 1% or less of the total votes cast for that office or not  
41 more than 1,000 votes, whichever is less, a deposit is not required. A candidate who

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1 is not required to pay a deposit pursuant to this subsection may not be charged for the  
2 recount regardless of whether the procedure changes the result of the election.

3 B. If the difference shown by the official tabulation between the leading candidate  
4 and the requesting candidate is more than 1% of the total votes cast for that office or  
5 more than 1,000 votes, whichever is less, the deposit is \$5,000 or 10% of the  
6 reasonable estimate of the cost to the State of performing the first stage of the  
7 recount, whichever is greater. After completion of the recount, if the recount has not  
8 changed the result of the election, the Secretary of State shall calculate the actual cost  
9 of the procedure, which must be paid by the requesting candidate. If the deposit is  
10 greater than the actual cost, the overpayment must be refunded to the candidate. If  
11 the actual cost is greater than the deposit, the candidate shall pay the remainder of the  
12 actual cost to the State. Once the State Police have taken custody of the ballots and  
13 other election materials for the first stage of the recount, the deposit made by the  
14 candidate requesting the recount is forfeited to the State even if the candidate  
15 withdraws from the recount before the recount begins. If a recount reverses the  
16 election, the deposit must be returned to the candidate requesting the recount.

17 **Sec. 6. 21-A MRSA §737-A, sub-§2**, as enacted by PL 1993, c. 473, §31 and  
18 affected by §46, is amended to read:

19 **2. Recount request.** If a ballot contains the names of state and local candidates or  
20 questions, the Secretary of State shall determine which requests for recount must be  
21 honored first when more than one request is presented. If a recount is requested for more  
22 than one office or referendum question that is included on the same ballot for one or more  
23 jurisdictions, the Secretary of State may determine a process for counting the ballots for  
24 both offices or questions simultaneously.

25 **Sec. 7. 21-A MRSA §737-A, sub-§2-A**, as enacted by PL 2009, c. 253, §43, is  
26 amended to read:

27 **2-A. Recount for write-in candidates.** For the purposes of this section, a declared  
28 write-in candidate who has complied with the requirements of section 722-A is treated  
29 the same as any candidate whose name is printed on the ballot. ~~An undeclared write-in~~  
30 ~~candidate also may request a recount and be treated as a designated recount candidate, but~~  
31 ~~only upon first submitting a written request for a recount that must contain a statement~~  
32 ~~signed by the candidate that the candidate will accept the nomination. The consent must~~  
33 ~~contain a declaration of the candidate's place of residence and party designation and a~~  
34 ~~statement that the candidate meets the qualifications of the office the write-in candidate~~  
35 ~~seeks, which the candidate must verify by oath or affirmation before a notary public or~~  
36 ~~other person authorized by law to administer oaths or affirmations that the declaration is~~  
37 ~~true. The undeclared write-in candidate must submit a \$10,000 deposit. If the recount~~  
38 ~~fails to reverse the outcome of the election, the undeclared candidate must also pay the~~  
39 ~~actual cost of the recount, as determined by the Secretary of State.~~

40 **Sec. 8. 21-A MRSA §738**, as amended by PL 1995, c. 506, §1 and affected by §3,  
41 is repealed and the following enacted in its place:

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**§738. Statewide referendum ballots**

Except as provided by this section, the method of conducting a recount of a statewide referendum is governed by section 737-A. Appeal of challenged or disputed ballots is to the Supreme Judicial Court.

**1. Recount request.** To request a recount of a statewide referendum, a petition signed by 200 or more registered voters must be submitted to the Secretary of State within 8 business days after the election. The Secretary of State shall provide a petition form for this purpose to any registered voter in the State who requests it within 2 days of receiving the request.

**2. Deposit for recount.** A representative of the recount petitioners shall pay the deposit required by this section when the petition is submitted to the Secretary of State. The amount of the deposit is calculated as follows.

A. If the difference shown by the official tabulation between the yes and the no votes is 1% or less of the total votes cast for that question or not more than 1,000 votes, whichever is less, a deposit is not required. Petitioners who are not required to pay a deposit pursuant to this subsection may not be charged for the recount regardless of whether the procedure changes the result of the election.

B. If the difference shown by the official tabulation between the yes and the no votes is more than 1% of the total votes cast for that question or more than 1,000 votes, whichever is less, the deposit is \$5,000 or 10% of the reasonable estimate of the cost to the State of performing the first stage of the recount, whichever is greater. After the completion of the recount, if the recount has not changed the result of the election, the Secretary of State shall calculate the cost of the procedure, which must be paid by the petitioners. If the deposit is greater than the actual cost, the overpayment must be refunded to the petitioners. If the actual cost is greater than the deposit, the petitioners shall pay to the State the remainder of the actual cost. Once the State Police have taken custody of the ballots and other election materials for the first stage of the recount, the deposit made by the petitioners is forfeited to the State even if the petitioners withdraw from the recount before the recount begins. If a recount reverses the result of the election, the deposit must be returned to the petitioners.

**3. Order of recounts.** If a ballot contains state and local candidates or questions and a recount is requested, the Secretary of State shall determine which requests for recount must be honored first when more than one request is presented. If recounts are requested for more than one office or referendum question that is included on the same state ballot for one or more jurisdictions, the Secretary of State may determine a process for counting the ballots for both offices or questions simultaneously.'

**SUMMARY**

This amendment replaces the bill, which is a concept draft. The amendment makes several changes to the laws governing candidate and referendum recounts.

1. The amendment provides that when a recount is requested for a statewide office, congressional office, statewide referendum or county office that encompasses more than

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one county, the Secretary of State may direct the State Police to retrieve ballots from certain jurisdictions so that the recount may be conducted in stages.

2. The amendment provides for a new deposit and payment structure for recounts for statewide offices, congressional offices or county offices that encompass more than one county, such as District Attorney, so that a deposit is not required when the difference between the leading candidate and the requesting candidate is 1% or less of the total votes cast for that office or not more than 1,000 votes, whichever is less.

3. The amendment provides that for recounts for a statewide office, congressional office or county office that encompasses more than one county when the percentage difference exceeds the threshold for a no-deposit recount, the requesting candidate must pay a deposit of \$5,000 or 10% of the estimated cost of the first stage of the recount, whichever is greater. If the recount does not change the result of the election, the candidate must pay the actual costs to the State of conducting the recount. If the recount reverses the election, the requesting candidate receives a complete refund.

4. The amendment adopts a new deposit and payment structure for recounts of a statewide referendum that is the same as the one provided for statewide candidate recounts.

5. The amendment provides that if recounts are requested for more than one office or referendum question that are on the same ballot for one or more jurisdictions, the Secretary of State may determine a process for counting the ballots for both of the offices or questions simultaneously.

6. Finally, the amendment removes the provision in current law allowing an undeclared write-in candidate to request a recount.

**FISCAL NOTE REQUIRED**  
**(See attached)**

**COMMITTEE AMENDMENT**



# 128th MAINE LEGISLATURE

LD 297

LR 1793(02)

**An Act To Improve the Administration of Election Recounts**

**Fiscal Note for Bill as Amended by Committee Amendment**

*A (H-156)*

**Committee: Veterans and Legal Affairs**

**Fiscal Note Required: Yes**

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## Fiscal Note

Potential current biennium revenue increase - General Fund

### Fiscal Detail and Notes

The bill establishes a new payment structure for recounts for statewide elections or elections involving more than one county. If such a recount is requested, General Fund revenues could be increased. No estimate of the potential increase is made at this time.