

MAINE STATE LEGISLATURE

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L.D. 95

Date: 3/26/19

Minority

(Filing No. H- 40)

VETERANS AND LEGAL AFFAIRS

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 81, L.D. 95, Bill, "An Act To Clarify Residency Requirements for Legislative Candidates"

Amend the bill by inserting after the enacting clause and before section 1 the following:

'Sec. 1. 21-A MRSA §1, sub-§32-A is enacted to read:

32-A. Primary residence. "Primary residence" has the same meaning as "residence," except that a person's primary residence may be a nontraditional residence, including but not limited to a shelter, park or underpass. A person may not have more than one primary residence at a time. If a person claims a homestead exemption on property under Title 36, chapter 105, subchapter 4-B, that property is presumed to be the person's primary residence until the person:

- A. Claims a homestead exemption on another property, at which time the other property is presumed to be the person's primary residence; or
- B. No longer claims a homestead exemption.'

Amend the bill by inserting after section 1 the following:

'Sec. 2. 21-A MRSA §336, sub-§3, as amended by PL 1995, c. 459, §24, is further amended to read:

3. Residence and party declared. The Except as provided in subsection 4, the consent must contain a declaration of the candidate's place of residence and party designation and a statement that the candidate meets the qualifications of the office the candidate seeks, which the candidate must verify by oath or affirmation before a notary public or other person authorized by law to administer oaths or affirmations that the declaration is true. If, pursuant to the challenge procedures in section 337, any part of the declaration is found to be false by the Secretary of State, the consent and the primary petition are void.

Sec. 3. 21-A MRSA §336, sub-§4 is enacted to read:

COMMITTEE AMENDMENT

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4. Candidates for state legislative office; primary residence and party declared.
The consent of a candidate for State Senator or State Representative must contain a declaration of the candidate's party designation and a statement that the candidate meets the qualifications of office, including that the candidate's primary residence is located in the district the person seeks to represent. The candidate must verify by oath or affirmation before a notary public or other person authorized by law to administer oaths or affirmations that the declaration is true. If, pursuant to the challenge procedures in section 337, any part of the declaration is found to be false by the Secretary of State, the consent and the primary petition are void.'

Amend the bill by striking out all of section 4 and inserting the following:

'Sec. 4. 21-A MRSA §355, sub-§3, as amended by PL 1999, c. 645, §2, is further amended to read:

3. Qualifications declared. The Except as provided in subsection 4, the consent must contain a declaration of the candidate's place of residence and the fact that the candidate has not been enrolled in a party qualified to participate in a primary or general election after March 1st of that election year and that the candidate meets the qualifications of the office the candidate seeks. The candidate must verify by oath or affirmation before a notary public or other person authorized by law to administer oaths or affirmations that the declaration is true. If, pursuant to the challenge procedures in section 356, any part of the declaration is found to be false by the Secretary of State, the consent and the nomination petition are void.

A. Candidates for the office of county charter commission need not verify by oath or affirmation that they are not enrolled in a party.

Sec. 5. 21-A MRSA §355, sub-§4 is enacted to read:

4. Candidates for state legislative office; qualifications declared. The consent must contain a declaration of the fact that the candidate has not been enrolled in a party qualified to participate in a primary or general election after March 1st of that election year and that the candidate meets the qualifications of the office the candidate seeks, including that the candidate's primary residence is located in the district the person seeks to represent. The candidate must verify by oath or affirmation before a notary public or other person authorized by law to administer oaths or affirmations that the declaration is true. If, pursuant to the challenge procedures in section 356, any part of the declaration is found to be false by the Secretary of State, the consent and the nomination petition are void.

Sec. 6. 21-A MRSA §361, as enacted by PL 1985, c. 161, §6, is repealed.

Sec. 7. 21-A MRSA §361-A is enacted to read:

§361-A. Vacancy defined; unexpired term

1. Vacancy in state legislative office. A vacancy occurs in the office of State Senator or State Representative when the incumbent fails to qualify, dies, resigns or becomes disqualified or when the primary residence of the incumbent changes to a district other than the district the incumbent represents in violation of section 352-A, subsection 3.

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2. Vacancy in other offices. A vacancy in any federal, county or state office other than the office of State Senator or State Representative, in the office of an election official or in any political committee occurs when the incumbent fails to qualify, dies, resigns or becomes disqualified or when the residence of the incumbent changes to an electoral division other than the division in which the incumbent was elected.

3. Filled for unexpired term. A vacancy in any office must be filled for an unexpired term, except where it is specifically provided to the contrary.

Sec. 8. 21-A MRSA §722-A, sub-§§1 and 2 are enacted to read:

1. Additional requirements; candidates for state legislative office. To be considered a declared write-in candidate for the office of State Senator or State Representative, a person must declare that the person meets all of the qualifications for that office, including that the person's primary residence is located in the district the person seeks to represent on a form approved by the Secretary of State. The candidate must verify by oath or affirmation before a notary public or other person authorized by law to administer oaths or affirmations that the declaration is true. If, pursuant to the challenge procedures in subsection 2, any part of the declaration required by this section is found to be false, the person may not be considered a declared write-in candidate.

2. Challenge to determination of declared write-in candidate for State Senator or State Representative. The procedure for challenging the validity of a declaration under subsection 1 is as follows.

A. Only a registered voter residing in the electoral division of the office that the declared write-in candidate who filed the declaration under subsection 1 seeks to fill may file a challenge. The challenge must be in writing and must set forth the reasons for the challenge. The challenge must be filed in the office of the Secretary of State by 5 p.m. on the 5th business day after the deadline for filing the declaration under this section.

B. Within 7 days after the final date for filing challenges and after due notice of the hearing is provided to the declared write-in candidate and to the challenger, the Secretary of State shall hold a public hearing on any challenge properly filed. The challenger has the burden of providing evidence that the declared write-in candidate does not meet the qualifications for that office.

C. The Secretary of State shall rule on a challenge within 5 days after the completion of the hearing described in paragraph B.

D. A challenger or the declared write-in candidate may appeal the decision of the Secretary of State by commencing an action in the Superior Court. This action must be conducted in accordance with the Maine Rules of Civil Procedure, Rule 80C, except as modified by this section. This action must be commenced within 5 days of the date of the decision of the Secretary of State. Upon timely application, anyone may intervene in this action when the applicant claims an interest relating to the subject matter of the petition, unless the applicant's interest is adequately represented by existing parties. The court shall issue its written decision containing its findings of fact and conclusions of law and setting forth the reasons for its decision within 20 days of the date of the decision of the Secretary of State.

H. O. P. S.

1 E. Any aggrieved party may appeal the decision of the Superior Court, on questions
2 of law, by filing a notice of appeal within 3 days of that decision. The record on
3 appeal must be transmitted to the Law Court within 3 days after notice of appeal is
4 filed. After filing notice of appeal, the parties have 4 days to file briefs and
5 appendices with the clerk of courts. As soon as the record and briefs have been filed,
6 the court shall immediately consider the case. The court shall issue its decision within
7 14 days of the date of the decision of the Superior Court.'

8 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
9 section number to read consecutively.

10 **SUMMARY**

11 This amendment, which is the minority report of the committee, adds a definition of
12 "primary residence" to the bill and specifies that, when a person who is a State Senator or
13 State Representative, or a candidate for those offices, claims a homestead exemption
14 under the Maine Revised Statutes, Title 36, chapter 105, subchapter 4-B, that property is
15 presumed to be the person's primary residence until the person claims a homestead
16 exemption on another property or until the person no longer claims a homestead
17 exemption on any property. A person who files a primary petition or a nomination
18 petition for these offices or who seeks to be declared a write-in candidate for these offices
19 must declare, under oath, that the person's primary residence is in the district the person
20 seeks to represent.

21 The amendment also clarifies that a vacancy occurs in the office of State Senator or
22 State Representative when the incumbent no longer maintains a primary residence in the
23 district the person represents.

FISCAL NOTE REQUIRED
(See Attached)

COMMITTEE AMENDMENT



129th MAINE LEGISLATURE

LD 95

LR 313(02)

An Act To Clarify Residency Requirements for Legislative Candidates

Fiscal Note for Bill as Amended by Committee Amendment *A(H-40)*

Committee: Veterans and Legal Affairs

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Department of Secretary of State associated with a potential increase in administrative hearings can be absorbed within existing budgeted resources.