

# 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 electronic originals  
(may include minor formatting differences from printed original)



# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

---

Legislative Document

No. 1991

---

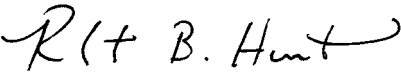
H.P. 1274

House of Representatives, May 23, 2023

### An Act Regarding Gubernatorial Primary Elections

---

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

  
ROBERT B. HUNT  
Clerk

Presented by Representative SUPICA of Bangor. (BY REQUEST)

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

2 **Sec. 1. 21-A MRSA §1, sub-§27-C**, as repealed and replaced by PL 2021, c. 273,  
3 §1, is repealed and the following enacted in its place:

4 **27-C. Elections determined by ranked-choice voting.** "Elections determined by  
5 ranked-choice voting" means any of the following elections in which 3 or more candidates  
6 have qualified to be listed on the ballot for a particular office or at least 2 such candidates  
7 plus one or more declared write-in candidates have qualified for that particular office:

8 A. Primary elections for the office of United States Senator, United States  
9 Representative to Congress, State Senator or State Representative;

10 B. Open primary elections for the office of Governor;

11 D. General elections for presidential electors, United States Senator and United States  
12 Representative to Congress; and

13 E. Primary elections for the office of President of the United States.

14 **Sec. 2. 21-A MRSA §1, sub-§27-E** is enacted to read:

15 **27-E. Election subject to an open primary.** "Election subject to an open primary"  
16 means the election for the office of Governor.

17 **Sec. 3. 21-A MRSA §1, sub-§27-F** is enacted to read:

18 **27-F. Open primary election.** "Open primary election" means, in an election subject  
19 to an open primary, the regular election for the election of 2 candidates for the office of  
20 Governor, regardless of enrollment status, who will appear on the ballot for the general  
21 election.

22 **Sec. 4. 21-A MRSA §1, sub-§32**, as amended by PL 1987, c. 423, §1, is further  
23 amended to read:

24 **32. Primary election.** "Primary election" means the regular election for the election  
25 of nominees of a party for the general election or, for an election subject to an open primary,  
26 the open primary election.

27 **Sec. 5. 21-A MRSA §144, sub-§2**, as amended by PL 2005, c. 453, §27, is further  
28 amended to read:

29 **2. Party designation removed.** On receipt of the application, the registrar shall  
30 remove the party designation of the applicant from the central voter registration system.  
31 The registrar shall indicate in the central voter registration system that the applicant is  
32 ineligible to vote at a caucus or primary election, other than an open primary election, for  
33 15 days by designating the party enrollment field with the letter "X." Fifteen days after  
34 receiving the application, the registrar shall enroll the applicant in the party requested and  
35 enter the new party designation in the party enrollment field.

36 This subsection does not apply in the case of a voter who changes enrollment under  
37 subsection 4.

38 **Sec. 6. 21-A MRSA §144, sub-§3**, as repealed and replaced by PL 2013, c. 457,  
39 §2, is amended to read:

1           **3. Restrictions during change of enrollment.** Except as provided in subsection 4, a  
2 voter may not vote at a caucus, convention or primary election, other than an open primary  
3 election, for 15 days after filing an application to change enrollment. A voter may sign a  
4 primary nomination petition during the 15-day period after filing an application to change  
5 enrollment, and the voter's signature must be counted as valid, as long as the 15-day period  
6 has elapsed by the time the petition is certified pursuant to section 335, subsection 7 and  
7 the voter otherwise is qualified to sign a petition for that office. Notwithstanding  
8 subsection 4, a voter must file an application to change enrollment prior to January 1st to  
9 be eligible to file a petition as a candidate in that election year.

10           **Sec. 7. 21-A MRSA §321, sub-§1**, as amended by PL 2005, c. 387, §4, is further  
11 amended to read:

12           **1. Time, place and representation.** The party's state committee shall determine the  
13 time, place and basis of representation for the convention. Delegates must be ~~qualified to~~  
14 ~~vote in the party's primary election~~ enrolled in the party unless otherwise permitted by party  
15 rules.

16           **Sec. 8. 21-A MRSA §334**, as amended by PL 2009, c. 253, §16, is further amended  
17 to read:

18           **§334. Qualification of candidate for primary nomination**

19           A Except as provided in section 451 for an open primary election, a candidate for  
20 nomination by primary election must file a primary petition and consent under sections 335  
21 and 336. The candidate must be enrolled, on or before March 15th, in the party named in  
22 the petition and must be eligible to file a petition as a candidate for nomination by primary  
23 election under section 144, subsection 3. The registrar in the candidate's municipality of  
24 residence must certify to that fact on a form designed by the Secretary of State.

25           **Sec. 9. 21-A MRSA §336, sub-§1**, as amended by PL 2011, c. 239, §1, is further  
26 amended to read:

27           **1. Consent.** The consent must contain a statement signed by the candidate that the  
28 candidate will accept the nomination of the primary election except that the consent signed  
29 by a candidate in an open primary election must contain a statement that the candidate  
30 agrees to have the candidate's name placed on the general election ballot if the candidate is  
31 declared the winner of the open primary election pursuant to section 723, subsection 1-A.  
32 The Secretary of State shall provide a form on which the consent of the candidate is made  
33 that must include a list of the statutory and constitutional requirements of the office sought  
34 by the candidate. The statement may be printed as a part of the primary petition.

35           **Sec. 10. 21-A MRSA §338**, as corrected by RR 2019, c. 2, Pt. B, §44, is amended  
36 to read:

37           **§338. Write-in candidates**

38           A Except as provided in section 452 for an open primary election, a person whose name  
39 will not appear on the printed primary ballot because that person did not file a petition and  
40 consent under sections 335 and 336, but who fulfills the other qualifications under section  
41 334, may be nominated at the primary election as a write-in candidate in accordance with  
42 section 723, subsection 1.

1           **Sec. 11. 21-A MRSA §340, sub-§1**, as enacted by PL 1987, c. 423, §3, is amended  
2 to read:

3           **1. Notice to Secretary of State.** No later than February 1st of the election year, each  
4 political party eligible to participate in a primary election, other than an open primary  
5 election, shall notify the Secretary of State of the enrollment qualifications, subject to the  
6 restrictions in section 144, for voters eligible to vote in that party's primary. If no notice is  
7 received by that date, only voters enrolled in a political party may vote in that party's  
8 primary.

9           **Sec. 12. 21-A MRSA §351, first ¶**, as enacted by PL 1985, c. 161, §6, is amended  
10 to read:

11           ~~The~~ Except as provided in subchapter 9, nomination of a candidate, other than by a  
12 party, for any federal, state or county office must be made by petition, as provided in this  
13 subchapter.

14           **Sec. 13. 21-A MRSA §351, sub-§4** is enacted to read:

15           **4. Elections subject to an open primary.** A person who satisfies the requirements of  
16 section 353 may file a nomination petition pursuant to this subchapter as a candidate for  
17 the open primary election in an election subject to an open primary. A person may not file  
18 a nomination petition pursuant to this subchapter as a candidate for the general election in  
19 an election subject to an open primary.

20           **Sec. 14. 21-A MRSA §354, sub-§1**, as amended by PL 2019, c. 371, §11, is further  
21 amended to read:

22           **1. Content.** A nomination petition must contain the name of only one candidate, the  
23 candidate's place of residence, the office sought and electoral division. A nomination  
24 petition may contain as many separate papers as necessary and may contain the candidate's  
25 consent required by section 355. It may also contain the candidate's political designation.  
26 This designation may not exceed 3 words in length, may not incorporate the candidate's  
27 name or the designation or an abbreviation of the designation of a party that is qualified to  
28 ~~nominate candidates by~~ participate in a primary election and may not consist of or comprise  
29 language that is obscene, contemptuous, profane or prejudicial, promotes abusive or  
30 unlawful activity or violates any other provision of the laws of this State with respect to  
31 names. A candidate who intends to form a new party about that person's candidacy must  
32 use the proposed party's designation.

33           A. When 2 United States Senators are to be nominated, the nomination petition must  
34 contain the term of office sought by the candidate.

35           B. The names of presidential electors must be placed on the petition as a slate. The  
36 names of the candidates for President and Vice President must be placed on a petition  
37 for the nomination of presidential electors.

38           **Sec. 15. 21-A MRSA §354, sub-§7, ¶B**, as amended by PL 2013, c. 131, §12, is  
39 further amended to read:

40           B. ~~Petitions~~ Except for petitions for nomination in an open primary election, petitions  
41 must be delivered to the registrar, or clerk at the request or upon the absence of the  
42 registrar, for certification by 5 p.m. on May 25th in the election year in which the  
43 petitions are to be used, except that petitions for a slate of candidates for the office of

1 presidential elector must be delivered for certification by 5 p.m. on July 25th in the  
2 election year in which the petitions are to be used.

3 **Sec. 16. 21-A MRSA §354, sub-§8-A**, as amended by PL 2013, c. 131, §13, is  
4 further amended to read:

5 **8-A. Filed with the Secretary of State.** A nomination petition must be filed in the  
6 office of the Secretary of State by 5 p.m. on June 1st in the election year in which it is to  
7 be used, except that a nomination petition for a candidate for an open primary election must  
8 be filed in the office of the Secretary of State by 5 p.m. on March 15th of the election year  
9 in which it is to be used and petitions for a slate of candidates for the office of presidential  
10 elector must be filed in the office of the Secretary of State by 5 p.m. on August 1st in the  
11 election year in which the petitions are to be used.

12 **Sec. 17. 21-A MRSA §355, sub-§1**, as amended by PL 2011, c. 534, §12, is further  
13 amended to read:

14 **1. Consent.** The consent must contain a statement signed by the candidate that the  
15 candidate will accept the nomination of the general election except that the consent signed  
16 by a candidate in an open primary election must contain a statement that the candidate  
17 agrees to have the candidate's name placed on the general election ballot if the candidate is  
18 declared the winner of the open primary election pursuant to section 723, subsection 1-A.  
19 The Secretary of State shall provide a form on which the consent of the candidate is made  
20 that must include a list of the statutory and constitutional requirements of the office sought  
21 by the candidate. The statement may be printed as a part of the nomination petition.

22 **Sec. 18. 21-A MRSA §361, first ¶**, as corrected by RR 2019, c. 2, Pt. B, §48, is  
23 amended to read:

24 A vacancy in any federal, state or county office, in the office of an election official or  
25 in any political committee occurs when the incumbent dies, resigns, becomes disqualified  
26 or changes the incumbent's residence to an electoral division other than that from which  
27 the incumbent was elected or when the person elected fails to qualify. A vacancy in the  
28 office of Governor also occurs at the beginning of the term of office for a candidate who  
29 was elected at a general election for that office but who died or became disqualified on or  
30 before the date of that general election.

31 **Sec. 19. 21-A MRSA §367**, as amended by PL 2019, c. 636, §5, is further amended  
32 to read:

33 **§367. Candidate withdrawal**

34 A Except as provided in section 374-A, subsection 4, a candidate who wishes to  
35 withdraw from an elective race shall notify the Secretary of State in writing of the  
36 candidate's intent to withdraw. This notice must be signed by the candidate.

37 **Sec. 20. 21-A MRSA §371**, as repealed and replaced by PL 2019, c. 636, §6, is  
38 amended to read:

39 **§371. Primary election candidates; vacancy**

40 **3. Vacancy and replacement of candidates in uncontested ~~raees~~ party primaries.**  
41 If For a primary election other than an open primary election, if a candidate for nomination  
42 dies or becomes disqualified prior to the primary election or withdraws 70 days or more

1 before the primary election, the Secretary of State shall declare the vacancy pursuant to  
2 section 362-A if no other candidate from the same political party will appear on the primary  
3 election ballot for that office. A political committee may fill the vacancy pursuant to  
4 section 363. The Secretary of State shall remove the former candidate's name from the  
5 primary election ballot and shall produce new primary election ballots or amend or  
6 supplement the primary election ballots already printed in accordance with section 376 or  
7 604.

8 **4. Removal of candidate's name from ballot in contested ~~raees~~ party primaries.**  
9 ~~The~~ For a primary election other than an open primary election, the Secretary of State shall  
10 remove the name of a candidate for nomination from the primary election ballot but is not  
11 required to declare a vacancy if, 70 days or more before the primary election, the candidate  
12 dies, becomes disqualified or withdraws and another candidate from the same political  
13 party will appear on the ballot for that office.

14 **5. Death or disqualification of candidates less than 70 days before primary**  
15 **election in contested ~~raees~~ party primaries.** The For a primary election other than an  
16 open primary election, the Secretary of State is not required to remove the name of a  
17 candidate from the primary election ballot or declare a vacancy if a candidate dies or  
18 becomes disqualified less than 70 days before the primary election and another candidate  
19 from the same political party will appear on the ballot for that office. Upon receipt of  
20 information that the candidate has died or become disqualified, the Secretary of State shall  
21 immediately prepare and distribute to the local election officials in the candidate's electoral  
22 district a notice informing voters that the candidate has died or become disqualified and  
23 that a vote for that candidate will not be counted. The notice must be distributed with all  
24 absentee ballots requested after the notice is received by the local election officials and, on  
25 election day, must be posted outside the guardrail enclosure in accordance with section  
26 651, subsection 2 and in each voting booth. Notice that the candidate has died or become  
27 disqualified must also be posted on the Secretary of State's publicly accessible website.

28 **6. Withdrawal of candidates less than 70 days before primary election in**  
29 **contested and uncontested ~~raees~~ party primaries.** ~~When~~ For a primary election other  
30 than an open primary election, when a candidate for nomination withdraws less than 70  
31 days before the primary election, the candidate's name may not be removed from the  
32 primary election ballot and a vacancy may not be declared. Upon receipt of the notice of  
33 withdrawal, the Secretary of State shall immediately prepare and distribute to the local  
34 election officials in the candidate's electoral district a notice informing voters that the  
35 candidate has withdrawn and that a vote for that candidate will not be counted. The notice  
36 must be distributed with all absentee ballots requested after the notice is received by the  
37 local election officials and, on election day, must be posted outside the guardrail enclosure  
38 in accordance with section 651, subsection 2 and in each voting booth. Notice of the late  
39 withdrawal must also be posted on the Secretary of State's publicly accessible website.

40 **7. Removal of candidate's name from ballot in open primary elections.** The  
41 Secretary of State shall remove the name of a candidate from the primary election ballot  
42 but is not required to declare a vacancy if, 70 days or more before an open primary election,  
43 the candidate dies, becomes disqualified or withdraws.

44 **8. Withdrawal, death or disqualification of candidates less than 70 days before**  
45 **open primary election.** When a candidate for an open primary election dies, becomes  
46 disqualified or withdraws less than 70 days before the open primary election, the

1 candidate's name may not be removed from the open primary election ballot and a vacancy  
2 may not be declared. Upon receipt of information that the candidate has died or become  
3 disqualified or upon receipt of the notice of withdrawal, the Secretary of State shall  
4 immediately prepare and distribute to the local election officials in the candidate's electoral  
5 district a notice informing voters that the candidate has died, become disqualified or  
6 withdrawn and that a vote for that candidate will not be counted. The notice must be  
7 distributed with all absentee ballots requested after the notice is received by the local  
8 election officials and, on election day, must be posted outside the guardrail enclosure in  
9 accordance with section 651, subsection 2 and in each voting booth. Notice of the late  
10 withdrawal must also be posted on the Secretary of State's publicly accessible website.

11 **Sec. 21. 21-A MRSA §374-A**, as amended by PL 2019, c. 636, §9, is further  
12 amended to read:

13 **§374-A. General election candidates; vacancy**

14 **1. Vacancy and replacement of nominees in elections not subject to open primary.**  
15 The In an election other than an election subject to an open primary, the Secretary of State  
16 shall declare the vacancy as provided in section 362-A and a political committee may make  
17 a replacement nomination for the general election only if a person nominated for an office  
18 at a primary election or by a political committee:

19 A. Withdraws on or before 5 p.m. of the 2nd Monday in July preceding the general  
20 election in accordance with section 367;

21 B. Withdraws because of a catastrophic illness, condition or injury that has  
22 permanently and continuously incapacitated the candidate and would prevent  
23 performance of the duties of the office sought, as long as the candidate or a member of  
24 the candidate's immediate family files with the Secretary of State a certificate  
25 accompanying the withdrawal request that describes the illness, condition or injury and  
26 is signed by a licensed physician; or

27 C. Dies prior to the general election.

28 **2. Deadline for replacement of nominee in elections not subject to open primary.**  
29 A In an election other than an election subject to an open primary, a political committee  
30 may make a replacement nomination for the general election:

31 A. No later than 5 p.m. of the 4th Monday in July preceding the general election for a  
32 candidate who has withdrawn in accordance with subsection 1, paragraph A; or

33 B. As soon as practicable for a candidate who withdraws or is withdrawn in accordance  
34 with subsection 1, paragraph B or C.

35 **2-A. Ballot procedure for replacement candidates in elections not subject to open**  
36 **primary.** If In an election other than an election subject to an open primary, if a political  
37 party makes a replacement nomination for the general election by the deadline established  
38 in subsection 2, the Secretary of State shall produce new general election ballots or amend  
39 or supplement general election ballots already printed in accordance with section 376 or  
40 604.

41 **3. Deadline for removal of candidate's name from general election ballot in**  
42 **elections not subject to open primary.** The name of a candidate for an office on the  
43 general election ballot who withdraws for any reason 70 days or more before the general



1 election must be removed from the ballot. If a candidate for an office on the general  
2 election ballot withdraws less than 70 days before the general election and meets the criteria  
3 of subsection 1, paragraph B or C, the candidate's name must be removed from the general  
4 election ballot in accordance with section 376 or the general election ballot must be  
5 amended or supplemented in accordance with section 604. If a candidate for an office on  
6 the general election ballot withdraws less than 70 days before the general election and does  
7 not meet the criteria of subsection 1, paragraph B or C, the candidate's name will not be  
8 removed from the ballot, but upon receipt of the notice of withdrawal required by section  
9 367, the Secretary of State shall immediately prepare and distribute to the local election  
10 officials in the candidate's electoral district a notice informing voters that the candidate has  
11 withdrawn and that a vote for that candidate will not be counted. The notice must be  
12 distributed with all absentee ballots requested after the notice is received by the local  
13 election officials and, on election day, must be posted outside the guardrail enclosure in  
14 accordance with section 651, subsection 2 and in each voting booth. Notice of a candidate's  
15 withdrawal less than 70 days before the general election must also be posted on the  
16 Secretary of State's publicly accessible website. This subsection does not apply to an  
17 election subject to an open primary.

18 **4. Withdrawal of open primary winner prohibited.** A candidate who is declared  
19 the winner of an open primary election pursuant to section 723, subsection 1-A may not  
20 withdraw from the general election.

21 **5. Death or disqualification of nominees in elections subject to open primary.** If  
22 a candidate who is declared the winner of an open primary election pursuant to section 723,  
23 subsection 1-A dies or becomes disqualified at any time before the general election, the  
24 candidate's name will not be removed from the ballot. Upon receipt of information that the  
25 candidate has died or become disqualified, the Secretary of State shall immediately prepare  
26 and distribute to local election officials in the candidate's electoral district and on the  
27 Secretary of State's publicly accessible website a notice informing voters that, although the  
28 candidate has died or become disqualified, a vote for that candidate will be counted and, if  
29 the candidate is declared the winner of the election, a vacancy will be declared at the  
30 beginning of the term for which the candidate was elected. The notice must be distributed  
31 with all absentee ballots requested after the notice is received by the local election officials  
32 and, on election day, must be posted outside the guardrail enclosure in accordance with  
33 section 651, subsection 2 and in each voting booth.

34 **Sec. 22.** **21-A MRSA §376, sub-§1-A,** as enacted by PL 2019, c. 636, §11, is  
35 amended to read:

36 **1-A. Removal of candidate's name from ballots.** The Except as provided in section  
37 374-A, subsection 4, the Secretary of State shall remove a candidate's name from the ballot  
38 if the candidate withdraws for any reason 70 days or more before any primary or general  
39 election.

40 **Sec. 23.** **21-A MRSA c. 5, sub-c. 9** is enacted to read:

41 **SUBCHAPTER 9**

42 **OPEN PRIMARY ELECTIONS**

1 **§451. Qualification of candidate for open primary election; same ballot**

2 Notwithstanding any provision of this Title to the contrary, the names of all qualified  
3 candidates for an election subject to an open primary must appear on the same ballot for  
4 the open primary election. A candidate is qualified to appear on the open primary ballot if  
5 the candidate:

6 **1. Candidate enrolled in a party.** Is enrolled in a party qualified to participate in a  
7 primary election under section 301, 302 or 303, enrolled in that party on or before March  
8 15th of the election year and filed a primary petition and consent that meets the  
9 requirements of sections 335 and 336, subject to challenge and appeal under section 337.  
10 The party designation of a candidate who meets the requirements of this subsection must  
11 be printed on the open primary election ballot; or

12 **2. Unenrolled candidates.** Is not enrolled in a party qualified to participate in a  
13 primary election; filed a nomination petition and consent that meets the requirements of  
14 sections 351, 354 and 355, subject to challenge and appeal under section 356; and was  
15 certified by the Secretary of State pursuant to section 357. The party designation, if any,  
16 of a candidate who meets the requirements of this subsection may not be printed on the  
17 open primary election ballot.

18 **§452. Declared write-in candidates**

19 Notwithstanding any provision of this Title to the contrary, a person who does not  
20 qualify to be listed on the open primary election ballot pursuant to section 451 but who  
21 qualifies as a declared write-in candidate pursuant to section 722-A may be nominated as  
22 a write-in candidate in an open primary election.

23 **§453. Voter at open primary election**

24 Notwithstanding any provision of this Title to the contrary, a voter qualified to vote in  
25 the general election for the office of Governor may vote in the open primary election for  
26 that office regardless of the voter's enrollment status.

27 **Sec. 24. 21-A MRSA §601, sub-§2, ¶D,** as amended by PL 2009, c. 253, §24, is  
28 further amended to read:

29 D. At the end of the list of candidates for each office, there must be left as many blank  
30 spaces as there are vacancies to be filled, except that no blank spaces may be placed at  
31 the end of the list of nominees for the office on the general election ballot for an election  
32 subject to an open primary. ~~These~~ The blank spaces left on the ballot under this  
33 paragraph may be used by a voter to write in the name of a person for whom the voter  
34 desires to vote, as provided in section 691, subsection 2 for a primary election or section  
35 692, subsection 2 for a general election.

36 **Sec. 25. 21-A MRSA §601, sub-§4,** as amended by PL 2001, c. 310, §29, is further  
37 amended to read:

38 **4. Distinctively colored Distinct color.** When possible, election ballots must be  
39 printed on white paper. Each political party participating in a primary election other than  
40 an open primary election must have a separate ballot. The paper for each party's primary  
41 ballot must be printed or distinguished with a different color marking as determined by the  
42 Secretary of State. For municipalities that include more than one single member district of  
43 the State Senate or the House of Representatives, or parts of more than one single member

1 district, the Secretary of State may prepare ballots with one or more distinctive color  
2 markings for each single member district or part of a single member district within the  
3 municipality.

4 **Sec. 26. 21-A MRSA §651, sub-§2, ¶B**, as amended by PL 2019, c. 636, §13, is  
5 further amended by amending subparagraph (3-A) to read:

6 (3-A) A supplemental notice correcting an error or providing information on a  
7 replacement candidate prepared under section 604 ~~or~~; a notice informing voters  
8 that a vote for a candidate will not be counted because the candidate has died or  
9 has withdrawn prepared under section 371, subsection 5 or 6 or section 374-A,  
10 subsection 3; or a notice informing voters that, although a candidate has died or  
11 become disqualified, a vote for that candidate will be counted and, if that candidate  
12 is declared the winner of the election, a vacancy will be declared at the beginning  
13 of the term of the office for which the candidate was elected, prepared under  
14 section 374-A, subsection 5, next to the sample ballots;

15 **Sec. 27. 21-A MRSA §673, sub-§1, ¶A**, as corrected by RR 2011, c. 2, §21, is  
16 amended by amending subparagraph (2) to read:

17 (2) Is not enrolled in the proper party, if voting in a primary election other than an  
18 open primary election;

19 **Sec. 28. 21-A MRSA §692, sub-§2**, as amended by PL 2009, c. 253, §30, is further  
20 amended to read:

21 **2. Write-in vote.** If the voter wishes to vote for a write-in candidate, the voter must  
22 write the name of the candidate in the blank space provided at the end of the list of nominees  
23 for the office in question. The voter must then mark the ballot as instructed in the directions  
24 on the ballot. A sticker may not be used to vote for a write-in candidate. A voter may not  
25 vote for a write-in candidate in a general election for an election subject to an open primary.

26 **Sec. 29. 21-A MRSA §696, sub-§2, ¶E-1** is enacted to read:

27 E-1. If a voter marks the write-in indicator on a general election ballot for an election  
28 subject to an open primary, the vote for that office may not be counted.

29 **Sec. 30. 21-A MRSA §722, sub-§1-A**, as amended by PL 2019, c. 371, §26, is  
30 further amended to read:

31 **1-A. Form of tabulation.** The tabulation must include the total votes for each question  
32 choice or candidate whose name appeared on the ballot. The tabulation also must include  
33 the total votes for any declared write-in candidates pursuant to section 722-A as follows.

34 A. For a write-in candidate who receives 5% or more of the votes cast for that office,  
35 the Secretary of State shall report the votes under the candidate's name.

36 B. For a write-in candidate who receives less than 5% of the votes cast for that office,  
37 the Secretary of State shall report the votes under the designation "others."

38 **Sec. 31. 21-A MRSA §722-A**, as amended by PL 2015, c. 447, §26, is further  
39 amended to read:

40 **§722-A. Determination of declared write-in candidate**

1 To be considered a declared write-in candidate, a person must file a declaration of  
2 write-in candidacy with the Secretary of State, on a form approved by the Secretary of  
3 State, on or before 5 p.m. on the 60th day prior to the election. The candidate must meet  
4 all the other qualifications for that office. A person may not be a declared write-in  
5 candidate for the general election in an election subject to an open primary.

6 **Sec. 32. 21-A MRSA §723, sub-§1**, as amended by PL 2019, c. 320, §8, is further  
7 amended to read:

8 **1. Primary election.** In a primary election other than an open primary election, the  
9 person who receives a plurality of the votes cast for nomination to any office, as long as  
10 there is at least one vote cast for that office, is nominated for that office, except for write-  
11 in candidates under paragraph A and elections determined by ranked-choice voting under  
12 section 723-A.

13 A. A write-in candidate who complies with section 722-A and who fulfills the other  
14 qualifications under section 334 may be nominated at the primary election if that person  
15 receives a number of valid write-in votes equal to at least twice the minimum number  
16 of signatures required under section 335, subsection 5 on a primary petition for a  
17 candidate for that office.

18 B. The Secretary of State shall immediately certify by mail the nomination of each  
19 person nominated by the primary election.

20 **Sec. 33. 21-A MRSA §723, sub-§1-A** is enacted to read:

21 **1-A. Open primary election.** In an open primary election for the office of Governor,  
22 the 2 persons who receive the most votes cast as determined by section 723-A must be  
23 declared the winners of the open primary election and are nominated to be placed on the  
24 general election ballot for that office. The Secretary of State shall immediately certify by  
25 mail the nomination of each person to be placed on the general election ballot pursuant to  
26 this subsection.

27 **Sec. 34. 21-A MRSA §723, sub-§1-B** is enacted to read:

28 **1-B. General election following open primary.** In a general election for the office  
29 of Governor, the nominee who receives a plurality of the votes cast for that office, as long  
30 as there is at least one vote cast for that office, is elected to that office. A write-in candidate  
31 may not be elected in a general election for an election subject to an open primary.

32 **Sec. 35. 21-A MRSA §723, sub-§2**, as amended by PL 2017, c. 316, §7, is further  
33 amended to read:

34 **2. Other elections.** In any ~~other~~ election not governed by subsection 1, 1-A or 1-B,  
35 except for those determined by ranked-choice voting, the person who receives a plurality  
36 of the votes cast for election to any office, as long as there is at least one vote cast for that  
37 office, is elected to that office, except that a write-in candidate must also comply with  
38 section 722-A.

39 **Sec. 36. 21-A MRSA §723-A, sub-§1**, as amended by PL 2019, c. 320, §§9 to 11,  
40 is further amended to read:

41 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
42 following terms have the following meanings.

- 1 A. "Batch elimination" means the simultaneous defeat of multiple candidates for  
2 whom it is mathematically impossible to be elected.
- 3 B. "Continuing ballot" means a ballot that is not an exhausted ballot.
- 4 C. "Continuing candidate" means a candidate who has not been defeated.
- 5 D. "Exhausted ballot" means a ballot that does not rank any continuing candidate,  
6 contains an overvote at the highest continuing ranking or contains 2 or more sequential  
7 skipped rankings before its highest continuing ranking.
- 8 E. "Highest continuing ranking" means the highest ranking on a voter's ballot for a  
9 continuing candidate.
- 10 F. "Last-place candidate" means the candidate with the fewest votes in a round of the  
11 ranked-choice voting count.
- 12 G. "Mathematically impossible to be elected," with respect to a candidate, means  
13 ~~either~~:
- 14 (1) ~~The~~ In an election other than an open primary election, the candidate cannot  
15 be elected because the candidate's vote total in a round of the ranked-choice voting  
16 count plus all votes that could possibly be transferred to the candidate in future  
17 rounds from candidates with fewer votes or an equal number of votes would not  
18 be enough to surpass the candidate with the next-higher vote total in the round; or
- 19 (1-A) In an open primary election for Governor, the candidate cannot be elected  
20 because the candidate's vote total in a round of the ranked-choice voting count plus  
21 all votes that could possibly be transferred to the candidate in future rounds from  
22 candidates with fewer votes or an equal number of votes would not be enough to  
23 surpass the 2 candidates with higher vote totals in the round; or
- 24 (2) The candidate has a lower vote total than a candidate described in subparagraph  
25 (1) or (1-A).
- 26 H. "Overvote" means a circumstance in which a voter has ranked more than one  
27 candidate at the same ranking.
- 28 H-1. "Ranked-choice voting count" means the ranked-choice counting process  
29 described in this section and in rules adopted by the Secretary of State.
- 30 I. "Ranking" means the number assigned on a ballot by a voter to a candidate to express  
31 the voter's preference for that candidate. Ranking number one is the highest ranking,  
32 ranking number 2 is the next-highest ranking and so on.
- 33 J. "Round" means an instance of the sequence of vote counting steps established in  
34 subsection 2 or 2-A and in rules adopted by the Secretary of State.
- 35 K. "Skipped ranking" means a circumstance in which a voter has left a ranking blank  
36 and ranks a candidate at a subsequent ranking.

37 **Sec. 37. 21-A MRSA §723-A, sub-§2**, as amended by PL 2019, c. 320, §12, is  
38 further amended to read:

39 **2. Procedures in election that is not open primary election.** Except as provided in  
40 subsections 3 and 4, the following procedures are used to determine the winner of an  
41 election determined by ranked-choice voting that is not an open primary election for the

1 office of Governor. The ranked-choice voting count must proceed in rounds. In each  
2 round, the number of votes for each continuing candidate must be counted. Each  
3 continuing ballot counts as one vote for its highest-ranked continuing candidate for that  
4 round. Exhausted ballots are not counted for any continuing candidate. The round then  
5 ends with one of the following 2 potential outcomes.

6 A. If there are 2 or fewer continuing candidates, the candidate with the most votes is  
7 declared the winner of the election.

8 B. If there are more than 2 continuing candidates, the last-place candidate is defeated  
9 and a new round begins.

10 **Sec. 38. 21-A MRSA §723-A, sub-§2-A** is enacted to read:

11 **2-A. Procedures in open primary election.** Except as provided in subsections 3-A  
12 and 4, the following procedures are used to determine the top 2 candidates in an open  
13 primary election for the office of Governor determined by ranked-choice voting. The  
14 ranked-choice voting count must proceed in rounds. In each round, the number of votes  
15 for each continuing candidate must be counted. Each continuing ballot counts as one vote  
16 for its highest-ranked continuing candidate for that round. Exhausted ballots are not  
17 counted for any continuing candidate.

18 A. For determining the candidates for the office of Governor, the round ends with one  
19 of the following 2 potential outcomes.

20 (1) If there are 3 or fewer continuing candidates, the 2 candidates with the most  
21 votes are declared the winners of the open primary election.

22 (2) If there are more than 3 continuing candidates, the last-place candidate is  
23 defeated and a new round begins.

24 **Sec. 39. 21-A MRSA §723-A, sub-§3,** as amended by PL 2019, c. 320, §13, is  
25 further amended to read:

26 **3. Ties in election that is not open primary election.** A tie ~~under this section~~ between  
27 last-place candidates in an election determined by ranked-choice voting that is not an open  
28 primary election for the office of Governor in any round other than the final round must be  
29 decided by lot, and the candidate chosen by lot is defeated. The result of the tie resolution  
30 must be recorded and reused in the event of a recount. A tie between candidates for the  
31 most votes in the final round must be decided as provided in section 732.

32 **Sec. 40. 21-A MRSA §723-A, sub-§3-A** is enacted to read:

33 **3-A. Ties in open primary election.** A tie between the 2nd-place and 3rd-place  
34 candidates for the office of Governor in an open primary election in any round must be  
35 decided by lot, and the candidate chosen by lot is defeated. The result of the tie resolution  
36 must be recorded and reused in the event of a recount. A tie between the top 2 candidates  
37 for the office of Governor in the final round of an open primary election need not be  
38 resolved.

39 **Sec. 41. 21-A MRSA §732, sub-§1,** as corrected by RR 2019, c. 2, Pt. B, §58, is  
40 amended to read:

41 **1. Primary election.** In a primary election other than an open primary election for the  
42 office of Governor, the Secretary of State shall notify each person involved in the tie to be

1 present at the Secretary of State's office at a certain time. At that time, the Secretary of  
2 State shall select the nominee publicly by lot.

3 **Sec. 42. 21-A MRSA §759, sub-§4**, as amended by PL 2007, c. 455, §43, is further  
4 amended to read:

5 **4. Warden to check absentee ballot for correct party or district.** At a primary  
6 election other than an open primary election when the warden removes a ballot from its  
7 envelope, the warden shall check its color to be sure it is the ballot of the party in which  
8 the voter is enrolled. If it is not, the warden shall immediately replace it in its envelope,  
9 reseal the envelope and write "Rejected" on it, the reason why and the warden's initials. At  
10 a primary or general election, in a municipality that has more than one voting district, when  
11 the warden removes a ballot from its envelope, the warden shall check its color to be sure  
12 it is the ballot of the district in which the voter is registered. If it is not, the warden shall  
13 challenge the ballot according to section 673.

14 **Sec. 43. 21-A MRSA §812, sub-§3**, as enacted by PL 1985, c. 161, §6, is amended  
15 to read:

16 **3. Write-in vote.** ~~It~~ Except for a general election in an election subject to an open  
17 primary, it must permit a voter to vote for a write-in candidate.

18 **Sec. 44. 21-A MRSA §812, sub-§5**, as enacted by PL 1985, c. 161, §6, is amended  
19 to read:

20 **5. Voting restricted at primary.** It must prevent a voter from voting for the  
21 nomination of candidates of more than one party at a primary election other than an open  
22 primary election.

23 **Sec. 45. 21-A MRSA §825, sub-§1**, as corrected by RR 2019, c. 2, Pt. B, §67, is  
24 amended to read:

25 **1. Primary election.** In a primary election other than an open primary election, the  
26 warden or, in the warden's absence, a designated election clerk must activate each voting  
27 machine so that a voter can vote only for the candidates of the political party in which the  
28 voter is enrolled.

29 **Sec. 46. 21-A MRSA §843, sub-§3**, as enacted by PL 1985, c. 161, §6, is amended  
30 to read:

31 **3. Write-in vote.** ~~It~~ Except for a general election in an election subject to an open  
32 primary, it must permit a voter to vote for a write-in candidate.

33 **Sec. 47. 21-A MRSA §843, sub-§4**, as enacted by PL 1985, c. 161, §6, is amended  
34 to read:

35 **4. Voting restricted at primary.** It must prevent a voter from voting for the  
36 nomination of candidates of more than one party at a primary election other than an open  
37 primary election.

## 38 SUMMARY

39 This bill provides for open primary elections for the elections for Governor. All of the  
40 candidates for that office, including candidates enrolled in a party and unenrolled

1 candidates, must appear on the same open primary ballot. All qualified voters, regardless  
2 of enrollment status, are eligible to vote in open primary elections.

3 The votes in an open primary election must be tabulated using ranked-choice voting,  
4 except that the 2 candidates who receive the most votes are declared the winners of the  
5 open primary. The names of the winners of an open primary must appear on the ballot for  
6 the general election. If one of the candidates who received the most votes at the open  
7 primary dies or becomes disqualified before the general election, that candidate's name  
8 must remain on the ballot and the voters must be notified that a vote for that candidate will  
9 be counted and, if that candidate is declared the winner of the election, a vacancy will be  
10 declared at the beginning of the term for which the candidate was elected. Voters may not  
11 vote for a write-in candidate in a general election that was preceded by an open primary  
12 election.