

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 3, 2008 to June 13, 2009**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 12, 2009**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Augusta, Maine**  
**2009**

(4) Complete and submit a toxic chemical release ~~form~~ report under section 799.

**Sec. 9. 37-B MRSA c. 15**, as amended, is repealed.

See title page for effective date.

**CHAPTER 253**

**H.P. 808 - L.D. 1169**

**An Act To Amend the Election Laws**

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

**Sec. 1. 21-A MRSA §1, sub-§11-A** is enacted to read:

**11-A. Declared write-in candidate.** "Declared write-in candidate" means a write-in candidate who has filed a declaration to be a write-in candidate pursuant to section 722-A.

**Sec. 2. 21-A MRSA §1, sub-§20**, as amended by PL 2007, c. 122, §2, is further amended to read:

**20. Immediate family.** "Immediate family" means a person's spouse, parent, grandparent, child, grandchild, sister, half-sister, brother, half-brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian or domestic partner, the half-brother or half-sister of a person's spouse, or the spouse of a person's half-brother or half-sister.

**Sec. 3. 21-A MRSA §1, sub-§33**, as enacted by PL 1985, c. 161, §6, is repealed.

**Sec. 4. 21-A MRSA §1, sub-§33-A** is enacted to read:

**33-A. Public counter.** "Public counter" means a separate counter built into a voting device that records the total number of ballots cast or tabulated on the voting device for an election.

**Sec. 5. 21-A MRSA §1, sub-§45-A** is enacted to read:

**45-A. Undeclared write-in candidate.** "Undeclared write-in candidate" means a write-in candidate who has not filed a declaration pursuant to section 722-A.

**Sec. 6. 21-A MRSA §1, sub-§51**, as amended by PL 1999, c. 426, §1, is further amended to read:

**51. Write-in candidate.** "Write-in candidate" means a person whose name does not appear on the ballot under the office designation to which a voter may wish to elect the candidate ~~and who has filed a~~

~~declaration to be a write-in candidate pursuant to section 722-A.~~

**Sec. 7. 21-A MRSA §23, sub-§3-A** is enacted to read:

**3-A. Direct initiative of legislation and people's veto petitions.** The Secretary of State shall keep direct initiative of legislation and people's veto petitions in the Office of the Secretary of State for 6 months after any appeal period has passed.

**Sec. 8. 21-A MRSA §101, sub-§1**, as amended by PL 2007, c. 455, §2, is further amended to read:

**1. Qualifications.** The registrar must be a citizen of the United States, a resident of the State and at least 18 years of age. The registrar may not hold, or be a candidate or treasurer for a candidate for, any state, local or county office, or be a municipal officer as defined by Title 30-A, section 2001 in the electoral division in which the registrar is appointed or be an officer of a municipal, county or state party committee. The registrar may not be an employee of a party or candidate.

**Sec. 9. 21-A MRSA §103, sub-§6**, as amended by PL 2007, c. 455, §4, is further amended to read:

**6. Appeal hearing.** Upon receipt of a complaint by a person aggrieved by the decision of the registrar, the chair of the registration appeals board shall immediately fix a time and place for the board to meet for a prompt hearing. The voter must be given written notice of the hearing at least 20 days in advance and must have the opportunity to testify and to present witnesses and other evidence at the hearing. The hearing is de novo. After hearing, the board may affirm, modify or reverse the decision of the registrar of voters. The board shall issue the decision to the voter in writing and shall provide information on how the voter may appeal the decision. The aggrieved person may appeal the decision of the board to the Superior Court in accordance with Rule 80B of the Rules of Civil Procedure.

**Sec. 10. 21-A MRSA §112, sub-§1, ¶A**, as amended by PL 1997, c. 436, §20, is further amended to read:

A. The following factors may be offered by an applicant and considered by a registrar in determining a person's residence under this section. The registrar need not find all of these factors to be present in order to conclude that an applicant qualifies to register to vote in the municipality:

- (1) A direct statement of intention by the person pursuant to section 121, subsection 1;
- (2) The location of any dwelling currently occupied by the person;

- (6) The place where any motor vehicle owned by the person is registered;
- (8) The residence address, not a post office box, shown on a current income tax return;
- (9) The residence address, not a post office box, at which the person's mail is received;
- (10) The residence address, not a post office box, shown on any current resident hunting or fishing licenses held by the person;
- (12) The residence address, not a post office box, shown on any motor vehicle operator's license held by the person;
- (14) The receipt of any public benefit conditioned upon residency, defined substantially as provided in this subsection; or
- (16) Any other objective facts tending to indicate a person's place of residence.

**Sec. 11. 21-A MRSA §112-A** is enacted to read:

**§112-A. Proof of identity for voting purposes**

Any of the following forms of documentation may be offered by an applicant and considered by a registrar in verifying the identity of an applicant who is registering to vote under this chapter and whose name does not already appear in the central voter registration system as a registered voter. The registrar need not request or consider all of these forms of documentation in order to verify an applicant's identity.

**1. Government-issued photograph identification document or credential.** A government-issued photograph identification document or credential, including, but not limited to, a current and valid United States passport, military identification, driver's license or state identification;

**2. Other government-issued identification document.** A government-issued identification document without a photograph, including, but not limited to, a certified birth certificate or a signed social security card;

**3. Other official documents.** An official document, including, but not limited to, a document confirming eligibility determinations for public benefits, a utility bill, a bank statement, a government check, a paycheck or other government document that shows the name and address of the voter; or

**4. Verified unique identifier for new voters.** A verified unique identifier for new voters, including the voter's Maine driver's license number, Maine identification number or the last 4 digits of the voter's social security number that are successfully verified through the central voter registration system verification.

**Sec. 12. 21-A MRSA §113**, as amended by PL 2005, c. 453, §10, is further amended to read:

**§113. Right survives change of residence**

A registered voter who moves to another state within ~~30~~ 60 days before a presidential election may not be removed from the incoming voting list and the voter's registration may not be cancelled in the central voter registration system until after the election unless the registrar has received confirmation of the voter's registration in another state. The voter may vote at that presidential election in person or by absentee ballot.

**Sec. 13. 21-A MRSA §154**, as amended by PL 2007, c. 455, §8, is further amended to read:

**§154. Registration and enrollment for citizens outside the United States**

**1. Application.** A person qualified to register under section 111, subsections 1 and 2 and who resides outside the United States and does not maintain a fixed and principal home or other address in the State may register at the last residence address immediately before leaving the United States and enroll by filing a federal postcard application or an application designed by the Secretary of State. If a citizen of the United States who resides outside the United States and has never lived in the United States has a parent who is a qualified elector, that person is eligible to register and vote where that parent is a qualified elector. The state application must include, but is not limited to:

- A. First name, middle name or initial and last name, first name or initial, middle name and last name or first name and last name;
- B. Last residence address immediately before departing from the United States, including street, street number, apartment number, town and zip code;
- C. Mailing address;
- D. Date of birth;
- H. Notification that failure to complete the entire application may prevent registration;
- J. Signature of applicant;
- L. Date of application;
- N. Choice of political party if the registrant wishes to enroll in a political party or an indication that the applicant chose not to enroll in a party;
- O. A place for the person's current, valid Maine driver's license number, if applicable; or, if the applicant has no driver's license number, the last 4 digits of the person's social security number, if applicable; or, if the applicant has neither number, a place to put "none" or "not applicable"; and

P. A place for the applicant to respond to the questions concerning the voter's qualifications as required by the federal Help America Vote Act of 2002, Public Law 107-252.

**Sec. 14. 21-A MRSA §158**, as amended by PL 2001, c. 102, §1, is further amended to read:

**§158. Municipal caucus**

The During the gubernatorial election year, the registrar shall attend the official party caucuses biennial municipal caucus of each qualified party for at least 30 minutes preceding the commencement of the party caucus at the location where the party caucus is being held to accept registrations and enrollments. During the presidential election year, the registrar shall attend the biennial municipal caucus of each qualified party for at least one hour preceding the commencement of the caucus at the location where the caucus is being held. The registrar shall accept the registrations and enrollments of all qualified voters who attempt to register and enroll, and all persons so registered and enrolled may participate in their party caucus. The registrar shall allow all persons to register or enroll who are present at the caucus at the end of the 30-minute or one-hour registration period.

**Sec. 15. 21-A MRSA §163**, as amended by PL 2007, c. 455, §10, is further amended to read:

**§163. Appeal**

In a municipality that does not have a registration appeals board, if a person is aggrieved by the decision of the registrar of voters to cancel that person's registration in the central voter registration system or to reject that person's registration application, the person may appeal in writing to the municipal officers by filing a complaint. The municipal officers shall immediately fix a time and place for a prompt hearing. The voter must be given written notice of the hearing at least 20 days in advance and must have the opportunity to testify and to present witnesses and other evidence at the hearing. The hearing is de novo. After hearing, the municipal officers may affirm, modify or reverse the decision of the registrar of voters. The municipal officers shall issue the decision to the voter in writing and shall provide information on how the voter may appeal the decision. The aggrieved person may appeal the decision of the municipal officers to the Superior Court in accordance with Rule 80B of the Rules of Civil Procedure.

**Sec. 16. 21-A MRSA §334**, as amended by PL 1995, c. 459, §21, is further amended to read:

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

A candidate for nomination by primary election must file a primary petition and consent under sections 335 and 336. The candidate must be enrolled, on or before March 15th, in the party named in the petition

and must be eligible to file a petition as a candidate for nomination by primary election under section 144, subsection 3. The registrar in the candidate's municipality of residence must certify to that fact ~~upon the petition~~ on a form designed by the Secretary of State.

**Sec. 17. 21-A MRSA §335, sub-§7, ¶A**, as amended by PL 2005, c. 196, §4, is further amended to read:

A. The circulator of a primary petition shall verify by oath or affirmation before a notary public or other person authorized by law to administer oaths or affirmations that the circulator personally witnessed all of the signatures to the petition were made in the circulator's presence and that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be; each signature authorized under section 153-A was made by the authorized signer in the presence and at the direction of the voter; and each person is enrolled in the party named in the petition and is a resident of the electoral division named in the petition.

**Sec. 18. 21-A MRSA §335, sub-§9**, as enacted by PL 1985, c. 161, §6, is repealed and the following enacted in its place:

**9. Petition validity.** For a candidate to qualify for the ballot, a nomination petition must meet all of the requirements of this section. If the circulator swears an oath or affirmation in accordance with subsection 7, paragraph A that the circulator reasonably believes to be true and accurate at the time the oath or affirmation is sworn and there is no proof of fraud or a knowingly false statement by the circulator, then the voters' signatures that do not meet the requirements of subsection 7, paragraph A may not be counted, but the petition is otherwise valid.

**Sec. 19. 21-A MRSA §353**, as amended by PL 1999, c. 426, §11, is further amended to read:

**§353. Qualification of candidate for nomination by petition**

A person who seeks nomination by petition qualifies by filing a nomination petition and consent as provided in sections 354 and 355. If enrolled, the person must also withdraw enrollment in a party on or before March 1st to be eligible to file a petition as a candidate in that election year, as provided in section 145. The registrar, ~~or clerk at the request or upon the absence of the registrar,~~ in the candidate's municipality of residence must certify to that fact ~~on the petition~~ a form designed by the Secretary of State.

**Sec. 20. 21-A MRSA §354, sub-§7, ¶A**, as amended by PL 2005, c. 196, §5, is further amended to read:

A. The circulator of a nomination petition shall verify by oath or affirmation before a notary pub-

lic or other person authorized by law to administer oaths or affirmations that the circulator personally witnessed all of the signatures to the petition ~~were made in the circulator's presence~~ and that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be; each signature authorized under section 153-A was made by the authorized signer in the presence and at the direction of the voter; and each person is a resident of the electoral division named in the petition.

**Sec. 21. 21-A MRSA §354, sub-§9**, as enacted by PL 1985, c. 161, §6, is repealed and the following enacted in its place:

**9. Petition validity.** For a candidate to qualify for the ballot, a nomination petition must meet all of the requirements of this section. If the circulator swears an oath or affirmation in accordance with subsection 7, paragraph A that the circulator reasonably believes to be true and accurate at the time the oath or affirmation is sworn and there is no proof of fraud or a knowingly false statement by the circulator, then the voters' signatures that do not meet the requirements of subsection 7, paragraph A may not be counted, but the petition is otherwise valid.

**Sec. 22. 21-A MRSA §356, sub-§2, ¶D**, as enacted by PL 1985, c. 161, §6, is amended to read:

D. A challenger or a candidate may appeal the decision of the Secretary of State by commencing an action in the Superior Court. This action ~~shall~~ must be conducted in accordance with the Maine Rules of Civil Procedure, Rule ~~80B~~ 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 and ~~shall~~ must be tried, without a jury, within 10 days of the date of that decision. 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.

**Sec. 23. 21-A MRSA §601, sub-§2, ¶B**, as amended by PL 2007, c. 455, §18, is further amended to read:

B. The ballot must contain the legal name of each candidate, without any title, and place of residence of each candidate, arranged alphabetically with the last name first, under the proper office designation. Municipality of residence is not required to be printed for candidates for President and Vice President of the United States. The initial letters of the last names of the candidates must

be printed directly beneath each other in a vertical line. The names of candidates for any one office may not be split into more than one column regardless of number. The name of each candidate may be printed on the ballot in only one space. For the general election ballot, the party or political designation of each candidate must be printed with each candidate's name. The party or political designation may be abbreviated.

**Sec. 24. 21-A MRSA §601, sub-§2, ¶D**, as amended by PL 2007, c. 455, §18, is further amended to read:

D. At the end of the list of candidates for each office, there must be left as many blank spaces as there are vacancies to be filled. These spaces may be used by a voter to write in the name ~~and municipality of residence~~ of a person for whom the voter desires to vote, as provided in section 691, subsection 2 for a primary election or section 692, subsection 2 for a general election.

**Sec. 25. 21-A MRSA §651, sub-§2**, as repealed and replaced by PL 1997, c. 436, §92, is amended to read:

**2. Election materials distributed and posted.**

At any time after the materials are received and before the polls are open, the clerk may open the packages or boxes of election materials, break the seals on the packages not marked "ballots," and use the materials for instructional purposes. The election officials shall post one instruction poster in each voting booth and at least one instruction poster outside the guardrail where ~~they are~~ it is visible to voters before they have voted. The election officials shall also post ~~2 sets~~ one set of sample ballots or ~~2 sets~~ one set of sample ballot labels for each ballot being used in that voting place, along with ~~2 posters~~ one poster of the constitutional resolutions and statewide referenda, outside the guardrail where they are visible to voters. The election officials shall post a list of any declared write-in candidates for that voting district, with the office sought, next to the sample ballot.

**Sec. 26. 21-A MRSA §671, sub-§3**, as amended by PL 2007, c. 455, §29, is further amended to read:

**3. Ballot issued.** The election clerk in charge of the ballots shall give the voter one ballot of each kind to which the voter is entitled. The election clerk in charge of the ballots may not give a voter voting with the accessible voting system ~~an official ballot, but~~ may give the voter a sample ballot to use as a visual aid. ~~Instead, an~~ An election official shall escort the voter to the voting station containing the accessible voting system, instruct the voter on its proper use and provide the voter with access to all ballots to which the voter is entitled. The voter shall cast the voter's ballot using the accessible voting system.

**Sec. 27. 21-A MRSA §682, sub-§3, ¶A**, as repealed and replaced by PL 2003, c. 447, §22, is amended to read:

A. This subsection does not apply to advertising material on automobiles traveling to and from the voting place for the purposes of voting. ~~It does not prohibit a person from passing out stickers at the voting place to be pasted on the ballot at a primary election.~~ It does not prohibit a person who is at the polls solely for the purpose of voting from wearing a campaign button when the longest dimension of the button does not exceed 3 inches.

**Sec. 28. 21-A MRSA §682, sub-§6** is enacted to read:

**6. Public property limited.** For purposes of this section, "public property" does not include a public right-of-way across privately owned property if it is an easement right-of-way.

**Sec. 29. 21-A MRSA §691, sub-§2**, as amended by PL 2007, c. 455, §36, is further amended to read:

**2. Write-in vote.** ~~If the voter wishes to vote for a person whose name is not on the ballot and who is not a declared write-in candidate in accordance with section 722-A, the voter must write the name and municipality of residence or paste a sticker containing the name and municipality of residence in the blank space provided at the end of the list of candidates for nomination to the office in question.~~ If the voter wishes to vote for a ~~declared~~ write-in candidate, the voter must write the name of the candidate in the blank space provided at the end of the list of candidates for nomination to the office in question. The voter must then mark the ballot as instructed in the directions on the ballot to indicate a vote for the write-in candidate. A sticker may not be used to vote for a write-in candidate.

**Sec. 30. 21-A MRSA §692, sub-§2**, as amended by PL 1993, c. 473, §22 and affected by §46, is further amended to read:

**2. Write-in vote.** If the voter wishes to vote for a ~~person whose name is not on the ballot~~ write-in candidate, the voter must write the name and municipality ~~of residence~~ of the candidate in the blank space provided at the end of the list of nominees for the office in question. The voter must then mark the ballot as instructed in the directions on the ballot. A sticker may not be used to vote for a write-in candidate.

**Sec. 31. 21-A MRSA §695, sub-§2**, as enacted by PL 1985, c. 161, §6 and amended by c. 383, §12, is further amended to read:

**2. Separated into lots.** In counting the ballots, the election clerks shall form into counting teams of 2 election clerks, each of whom has a different party affiliation. The counting teams shall separate them the

ballots into distinct lots. Each of these lots must consist of 50 ballots, except for one lot, which may have less than 50 ballots. Each counting team shall use one of the approved counting methods prescribed by the Secretary of State to produce 2 tally sheets for each lot that are in complete agreement as to the count for each candidate and question choice. They shall place with each lot ~~a statement of the count in one of the tally sheets for that lot and the names of that is signed by the election clerks who made the count.~~ They shall wrap the ~~statement of the count~~ tally sheet around the outside of ~~each the applicable~~ lot of ballots. The 2nd tally sheet for each lot must be provided to the warden for use in completing a total tally of each office and question and for completing the election return.

**Sec. 32. 21-A MRSA §696, sub-§2**, as amended by PL 2007, c. 455, §38, is further amended to read:

**2. Invalid vote.** A vote for an office, candidate or question held to be invalid by the warden, ward clerk or deputy warden may not be counted for that office, candidate or question as follows.

A. If a voter marks more names for an office than there are vacancies to be filled or more choices for a question than are permitted, the voter's vote for that office or question may not be counted.

B. If a voter marks the voter's ballot in such a manner that it is impossible to determine the voter's choice, the voter's vote for the office or question concerned may not be counted.

C. If a voter marks a write-in indicator for an office, but does not write ~~both a name and a municipality of residence~~ the name of a declared write-in candidate in the blank space provided to the right of the write-in indicator, that vote for that office ~~is not~~ may not be counted, unless a determination of choice under subsection 4 is possible.

D. If a voter writes in ~~a name and municipality of residence, or pastes a sticker containing the candidate's name and municipality of residence~~ the name of a declared write-in candidate in the write-in space pursuant to section 691, but does not mark the write-in indicator, that vote for that office may not be counted.

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

F. The warden, ward clerk or deputy warden shall write "Invalid vote" on the ballot and the reason the vote is invalid beside the office, candidate or

question for which it is invalid and shall sign it and replace the ballot with the other ballots, to be counted for other offices or questions.

**Sec. 33. 21-A MRSA §696, sub-§6**, as enacted by PL 2005, c. 404, §7, is amended to read:

**6. Rules.** The Secretary of State shall publish ~~uniform guidelines~~ is authorized to adopt rules pursuant to Title 5, chapter 375, subchapter 2-A for determining voter intent based on relevant case law and provisions of this Title. These ~~guidelines~~ rules must be used as a reference by election officials in tabulating the results of state and local elections and in all recounts conducted pursuant to this Title. ~~The guidelines~~ A copy of the rules must be included with the instructional materials provided to the clerk, registrar and election officials in each municipality pursuant to section 605 and must be used by the Secretary of State in the training of election officials pursuant to section 505. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 34. 21-A MRSA §711, first ¶**, as amended by PL 2001, c. 516, §12, is further amended to read:

As soon as the results of the election have been declared, the election return must be prepared. The warden at each ward or precinct shall fill out the election return form provided by the Secretary of State, showing the number of votes cast for each candidate or question and recording the total number of state ballots cast in that ward or precinct. The warden and one other election official shall sign the return and immediately deliver it to the municipal clerk. The form provided by the Secretary of State must include the names of all candidates, including declared write-in candidates as determined by section 722-A.

**Sec. 35. 21-A MRSA §721, 3rd ¶**, as enacted by PL 2005, c. 453, §57, is amended to read:

In a municipality in which a recount has been requested pursuant to section 737-A, the clerk shall update the central voter registration system by entering voter participation history for that election within 10 business days after receiving a copy of the incoming voting list ~~as required by section 737 A, subsection 9 that has been returned by the Secretary of State after the recount.~~ The clerk shall notify the Secretary of State as soon as this task is completed.

**Sec. 36. 21-A MRSA §722**, as amended by PL 2001, c. 516, §13, is further amended to read:

**§722. Secretary of State to tabulate and print results**

Within 20 days after an election, the Secretary of State shall tabulate the election returns and submit the tabulation to the Governor.

**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. ~~All write-in candidates, as defined in section 1, subsection 51, receiving less than 5% of the votes cast for that office must be titled "others" when the tabulation is processed.~~ 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.

**1-A. Form of tabulation.** The tabulation must include the total votes for each question choice or candidate whose name appeared on the ballot. The tabulation also must include the total votes for any write-in candidates who qualified to have their votes tabulated under subsection 1 as follows.

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

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

**2. Correction of return.** If it appears that an election return does not agree with the record of the vote at any voting place, the Secretary of State shall correct the tabulation by obtaining a certified copy of the record from the clerk.

**3. Tabulation printed.** The Secretary of State shall have copies of the tabulation printed and made available to the public.

**Sec. 37. 21-A MRSA §722-A**, as amended by PL 2007, c. 455, §40, is further amended to read:

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

To be considered a ~~valid~~ declared write-in candidate, a person must file a declaration of write-in candidacy with the Secretary of State, on a form approved by the Secretary of State, on or before 5 p.m. on the ~~3rd business~~ 45th day prior to the election. The candidate must meet all the other qualifications for that office.

**Sec. 38. 21-A MRSA §723, sub-§1**, as amended by PL 2001, c. 516, §14, is further amended to read:

**1. Primary election.** In a primary election, the person who receives a plurality of the votes cast for nomination to any office, as long as there is at least one vote cast for that office, is nominated for that of-



office, except for write-in candidates under paragraph A and ~~section 722-A.~~

~~A. A person who has not qualified as a candidate for nomination by primary election by filing a petition and consent under sections 335 and 336, but write-in candidate who complies with either section 722-A or section 737-A, subsection 2-A and who fulfills the other qualifications under section 334, may be nominated at the primary election if that person receives a number of valid write-in votes equal to at least twice the minimum number of signatures required under section 335, subsection 5, on a primary petition for a candidate for that office.~~

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

**Sec. 39. 21-A MRSA §723, sub-§2,** as amended by PL 2001, c. 516, §15, is further amended to read:

**2. Other elections.** In any other election, the person who receives a plurality of the votes cast for election to any office, as long as there is at least one vote cast for that office, is elected to that office, except that a write-in ~~candidate~~ candidate must also comply with either section 722-A or section 737-A, subsection 2-A.

**Sec. 40. 21-A MRSA §724, sub-§1,** as enacted by PL 1985, c. 161, §6, is repealed.

**Sec. 41. 21-A MRSA §737-A, first ¶,** as amended by PL 2007, c. 515, §7, is repealed.

**Sec. 42. 21-A MRSA §737-A, sub-§1,** as amended by PL 2003, c. 447, §25, is further amended to read:

**1. Deposit for recount.** All deposits required by this section must be made with the Secretary of State when a recount is requested by a losing candidate or an undeclared write-in candidate. Once the State Police have taken custody of the ballots and other election materials from the municipalities, the deposit made by the candidate requesting the recount is forfeited to the State if the resulting count fails to change the outcome of the election. If the recount reverses the election, the deposit must be returned to the candidate requesting the recount. The amount of the deposit is calculated as follows.

A. If the percentage difference shown by the official tabulation between the leading candidate and the requesting candidate is 2% or less of the total votes cast for that office, a deposit is not required.

B. If the percentage difference shown by the official tabulation between the leading candidate and the requesting candidate is more than 2% and less

than or equal to 4% of the total votes cast for that office, the deposit is \$500.

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

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

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

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

**Sec. 43. 21-A MRSA §737-A, sub-§2-A** is enacted to read:

**2-A. Recount for write-in candidates.** For the purposes of this section, a declared write-in candidate who has complied with the requirements of section 722-A is treated the same as any candidate whose name is printed on the ballot. An undeclared write-in candidate also may request a recount and be treated as a designated recount candidate, but only upon first submitting a written request for a recount that must contain a statement signed by the candidate that the candidate will accept the nomination. 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 write-in 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. The undeclared write-in candidate must submit a \$10,000 deposit. If the recount fails to reverse the outcome of the election, the undeclared candidate must also pay the actual cost of the recount, as determined by the Secretary of State.

**Sec. 44. 21-A MRSA §737-A, sub-§8,** as enacted by PL 1993, c. 473, §31 and affected by §46, is amended to read:

**8. Mistake in ballot count.** If it is found that a mistake was made in counting the ballots on election day, or if the recount results show that an undeclared write-in candidate received votes for a particular office, the Secretary of State shall submit a corrected tabulation to the Governor.

**Sec. 45. 21-A MRSA §737-A, sub-§9**, as amended by PL 2005, c. 453, §58, is further amended to read:

**9. Package resealed and marked.** After a recount, if the election remains in dispute, the Secretary of State shall copy the incoming voting list, before proceeding to reseat the packages of ballots and incoming voting lists, noting the fact and date of the recount on the packages. The Secretary of State shall immediately send or deliver the copy of the incoming voting list to the clerk for the purpose of updating voter participation history in the central voter registration system. The clerk shall immediately send a receipt to the Secretary of State noting the date and time of delivery of the copy. All challenged and disputed ballots must be packaged separately. The challenged and disputed ballots must be kept until released to the court or to the Senate or the House of Representatives, if applicable, in case of an appeal.

**Sec. 46. 21-A MRSA §737-A, sub-§12** is enacted to read:

**12. Authority to adopt rules.** The Secretary of State is authorized to adopt rules governing the conduct and procedures for a recount. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 47. 21-A MRSA §753-A, sub-§6**, as enacted by PL 2007, c. 515, §10, is amended to read:

**6. Application by electronic means.** A municipal clerk may opt to accept absentee ballot applications by e-mail electronic means. ~~If the clerk opts to accept absentee ballot applications by e-mail the clerk shall create a specific e-mail account for the purpose of accepting e-mail applications.~~ At least 120 days before any election administered by the State, the clerk shall notify the Secretary of State of the clerk's intention to accept absentee ballot applications by e-mail and of the e-mail address used to accept the absentee ballot applications electronic means. The Secretary of State shall post on its publicly accessible website a list of municipalities that have opted to accept absentee ballot applications by e-mail electronic means along with ~~the e-mail addresses and~~ procedures for requesting an absentee ballot by e-mail electronic means. The Secretary of State shall design or approve the form of the absentee ballot application to be submitted by e-mail electronic means.

If the clerk opts to accept absentee ballot applications by e-mail electronic means, a voter may make an application for the voter's own ballot by e-mail electronic means using the form designed or approved by the Secretary of State. The voter may not designate an immediate family member or a 3rd person to deliver the ballot on the voter's behalf. The clerk shall verify that it is the voter who is requesting the ballot by confirming the voter's residence address and birth date

with the information in the voter's record. The clerk shall print the ~~e-mail electronically submitted~~ application and write ~~"e-mail request"~~ "electronic request" on the application.

**Sec. 48. 21-A MRSA §753-B, sub-§8**, as amended by PL 2005, c. 568, §19, is further amended to read:

**8. Absentee voting in presence of clerk.** A person who wishes to vote by absentee ballot may, without completing an application, vote by absentee ballot in the presence of the clerk. The method of voting is otherwise as prescribed in this article. After the person has voted, the clerk shall sign the affidavit on the return envelope as a witness, indicate on the envelope that the voter voted in the presence of a clerk and ensure that the affidavit on the return envelope is properly completed by the voter. For the 45 days preceding an election, during the hours when the clerk's office is open and may be conducting absentee voting, the display or distribution of any advertising material intended to influence a voter's decision regarding a candidate or question on the ballot for that election is prohibited within the clerk's office and on public property within 250 feet of the entrance to the building in which the clerk's office is located.

This subsection does not apply to the display or distribution of any campaign advertising material on private property that is within 250 feet of the entrance to the building in which the clerk's office is located. For purposes of this section, "private property" includes privately owned property subject to a public right-of-way that is an easement right-of-way.

This subsection does not apply to campaign advertising material on automobiles traveling to and from the municipal office or parked on municipal property while the occupants are visiting the municipal office to conduct municipal business. It does not prohibit a person who is at the municipal office for the purpose of conducting municipal business or for absentee voting from wearing a campaign button when the longest dimension of the button does not exceed 3 inches.

**Sec. 49. 21-A MRSA §754-A, sub-§1, ¶C**, as amended by PL 1997, c. 436, §112, is further amended to read:

C. After the voter has completed marking the ballot, the voter shall then seal the ballot in its return envelope and complete the affidavit on the envelope. ~~No~~ A notary or witness certification is not required unless the voter is assisted pursuant to subsection 3.

**Sec. 50. 21-A MRSA §760-B, sub-§1**, as enacted by PL 2007, c. 455, §45, is amended to read:

**1. Time for processing.** In a municipality that has opted to process absentee ballots on the day immediately prior to election day, the municipal clerk or

the clerk's designees may process absentee ballots at the times designated by the clerk, between the hours of 9:00 a.m. and 9:00 p.m., except that if an inspection is requested pursuant to subsection 3, processing may not begin until after the inspection period has concluded.

**Sec. 51. 21-A MRSA §760-B, sub-§2**, as enacted by PL 2007, c. 455, §45, is amended to read:

**2. Notice of early processing.** The clerk must give notice of the municipality's intent to process absentee ballots prior to election day using the notice of election under section 621-A, stating each specific the time that the clerk intends to begin processing absentee ballots and the inspection period provided in subsection 3. At least 7 30 days before election day, the clerk shall notify provide a copy of the notice of election to the Secretary of State and the chairs of each political party of the municipality, in writing, that this procedure is to indicating that early processing of absentee ballots will occur. The notice to the political parties must be considered sufficient as long as it is mailed to the last address of each municipal chair that is known to the clerk. The notice to the Secretary of State may be delivered by mail or facsimile. A copy of the notice of election is considered notice in writing under this subsection. If the notice is not received by the Secretary of State by 5:00 p.m. on the 30th day before election day, the municipality may not process absentee ballots prior to election day.

**Sec. 52. 21-A MRSA §791, sub-§3, ¶B**, as enacted by PL 1993, c. 473, §38 and affected by §46, is amended to read:

B. Is a candidate who, notwithstanding this subchapter, delivers, receives, accepts, notarizes, assists or witnesses an absentee ballot, other than the candidate's own absentee ballot, furnished by the clerk of a municipality in this State. This paragraph does not apply to an elected municipal clerk in an election when no other name for the office of clerk appears on the ballot who is a candidate for reelection to the office of municipal clerk, where there is no other candidate for that office. In a contested election for the office of clerk, a clerk may not be exempted from the provisions of this paragraph but shall instead appoint a deputy or an assistant to whom the municipality shall pay all associated costs for the duration of the deputy's or assistant's temporary employment in that capacity.

**Sec. 53. 21-A MRSA §812-A, sub-§3** is enacted to read:

**3. Accessible feature for casting write-in vote.** As an accommodation for persons with disabilities, the audio ballot for the accessible voting system under subsection 1 may be programmed to provide an aural presentation of the names of any declared write-in candidates at the end of the list of candidates whose

names were listed on the printed ballot so that the voter may cast a vote for a declared write-in candidate in the same manner as voting for a listed candidate. If there is no declared write-in candidate for an office, the audio ballot may provide aural instructions to that effect.

**Sec. 54. 21-A MRSA §822, sub-§1**, as enacted by PL 1985, c. 161, §6, is amended to read:

**1. Counters exposed.** If the number on the seal agrees with the number on the envelope, the warden shall open the doors concealing the counters, inspect the machine and sign a certificate provided by the Secretary of State showing that all counters are set at "000," that the number of the protective public counter agrees with the number on the envelope and that all parts of the machine and the ballot labels are in proper condition for voting.

A. If the machine is provided with a device or devices for printing or photographing candidate and question counters, it is not necessary to open the door concealing the counters. The warden and the election clerk shall proceed to operate the mechanism provided to produce one "before election inspection record" showing whether the candidate and question counters register "000" and sign the certificate as prescribed by the Secretary of State.

**Sec. 55. 21-A MRSA §826, sub-§2**, as enacted by PL 1985, c. 161, §6, is amended to read:

**2. Totals announced.** The warden shall announce the total for each candidate in the order shown on the ballot label, for each referendum question and for each declared write-in candidate. As each total is read, it shall must be recorded by an election clerk from a political party other than that of the warden.

**Sec. 56. 21-A MRSA §827, sub-§1**, as enacted by PL 1985, c. 161, §6, is amended to read:

**1. Keys sealed in envelope.** In the presence of an election clerk from a political party other than that of the warden, the warden shall enclose the keys to each voting machine in separate envelopes furnished by the municipal clerk. The warden shall write the number of each machine, the location of the voting place in which it was used, the number on the seal and the numbers registered on the protective public counter on the outside of each envelope.

**Sec. 57. 21-A MRSA §901, first ¶**, as amended by PL 1993, c. 695, §33, is further amended to read:

To initiate proceedings for a people's veto referendum or the direct initiative of legislation, provided in the Constitution of Maine, Article IV, Part Third, Sections 17 and 18, a voter shall submit a written application to the Department of the Secretary of State on a form designed by the Secretary of State. The

application must contain the names, addresses and signatures of 5 voters, in addition to the applicant, who are designated to receive any notices in proceedings under this chapter. For a direct initiative, the application must contain the full text of the proposed law and a summary that explains the purpose and intent of the direct initiative. The voter submitting the application shall sign the application in the presence of the Secretary of State, the Secretary of State's designee or a notary public.

**Sec. 58. 21-A MRSA §901, sub-§3-A**, as amended by PL 2007, c. 234, §1, is further amended to read:

**3-A. Review for proper form.** The Secretary of State shall review the proposed law for a direct initiative of legislation within ~~40~~ 15 business days after receipt of the application and either reject the application or provide a first revised draft of the initiative legislation to the applicant within that time. The Secretary of State may reject the application if the Secretary of State determines that the proposed law:

- A. Does not conform to the form prescribed by the Secretary of State; or
- B. Does not conform to the essential aspects of the drafting conventions established for the Maine Revised Statutes. The drafting conventions include but are not limited to:
  - (1) Correct allocation to the statutes and correct integration with existing statutes;
  - (2) Bill titles and statute section headnotes that objectively reflect the content of the bill, section or sections to which they apply;
  - (3) Conformity to the statutory numbering system; and
  - (4) Ensuring that bills enacting statutes do not contain provisions that describe intent or make testimonial statements without creating a legal requirement or duty.

By consent of the applicant the proposed law may be modified to conform with the requirements of this section. The Secretary of State may request assistance from the Revisor of Statutes in reviewing the proposed law.

The applicant shall submit each subsequent draft of the legislation to the Secretary of State for review following the same process. The Secretary of State shall review each subsequent draft from the applicant and provide a revised draft or written response suggesting how the proposed law may be modified to conform ~~with~~ to the requirements of this section within 10 business days. The applicant must give written consent to the final language of the proposed law to the Secretary of State before the petition form is designed by the Secretary of State.

**Sec. 59. 21-A MRSA §906, sub-§2**, as enacted by PL 1985, c. 161, §6, is repealed.

See title page for effective date.

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## CHAPTER 254

### S.P. 184 - L.D. 488

#### An Act To Address an Inequity in the Judicial Retirement System

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

**Sec. 1. 4 MRSA §1201, sub-§9**, as amended by PL 2007, c. 449, §1 and affected by §3, is further amended to read:

**9. Earnable compensation.** "Earnable compensation" means the annual salary as a judge. Any money paid by the State under an annuity contract for the future benefit of a judge must be considered part of the judge's earnable compensation. The earnable compensation of a member retired with a disability retirement allowance under section 1353 must be assumed, for the purposes of determining benefits under this chapter, to be continued after the member's date of termination of service at the same rate as received immediately prior thereto, subject to the same percentage adjustments, if any, that may apply to the amount of retirement allowance of the beneficiary under section 1358. ~~Beginning~~ For a member who served as a judge any time between July 1, 2003 and June 30, 2005, earnable compensation for a sitting judge as of June 30, 2005 includes the salary that would have been paid for a judge in the given year if the cost-of-living adjustments in fiscal year 2003-04 and fiscal year 2004-05 had been funded.

**Sec. 2. Payment by member.** For any judge or justice who retired prior to September 20, 2007, the salary imputed under this Act may be included in the earnable compensation of a member to whom this Act applies only if the member pays the full actuarial costs of including the imputed salary.

**Sec. 3. Calculation; implementation.** For any judge or justice who elects to make the payment as required by section 2, the Maine Public Employees Retirement System shall recalculate that judge's or justice's retirement benefits based on the effective retirement date of that judge or justice and must include the cost-of-living adjustments as set forth in the Maine Revised Statutes, Title 4, section 1201, subsection 9, as amended by this Act.