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S.P. 540

In Senate, April 30, 2019

An Act To Clarify Ranked-choice Voting Laws

Submitted by the Secretary of State pursuant to Joint Rule 204.

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LUCHINI of Hancock.

Cosponsored by Representative SCHNECK of Bangor and

Senators: CHIPMAN of Cumberland, FARRIN of Somerset, Representatives: ACKLEY of Monmouth, Speaker GIDEON of Freeport, HICKMAN of Winthrop, MARTIN of Eagle Lake, MAXMIN of Nobleboro, STROM of Pittsfield.

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2 **Sec. 1. 21-A MRSA §1, sub-§27-C**, as repealed and replaced by PL 2017, c. 316,
3 §1, is amended to read:

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

9 A. Primary elections for the offices of United States Senator, United States
10 Representative to Congress, Governor, State Senator and State Representative; and

11 B. General and special elections for the offices of United States Senator and United
12 States Representative to Congress; and.

13 **Sec. 2. 21-A MRSA §601, sub-§1**, as amended by PL 1993, c. 473, §11 and
14 affected by §46, is further amended to read:

15 **1. Arrangement.** The ballots must be arranged in a manner that is as consistent and
16 uniform as possible throughout the State, except that ranked-choice contests must be
17 grouped together and presented either on a separate ballot from contests other than
18 ranked-choice contests or on one side of a 2-sided ballot.

19 **Sec. 3. 21-A MRSA §601, sub-§2, ¶A**, as amended by PL 2013, c. 131, §15, is
20 further amended to read:

21 A. Instructions must be printed on the ballot informing the voter how to designate
22 the voter's ~~choice~~ choices on the ballot. Specific instructions must be presented
23 above or next to the first contest of each type, such as ranked-choice contests,
24 contests other than ranked-choice contests or referenda.

25 **Sec. 4. 21-A MRSA §601, sub-§2, ¶J**, as amended by PL 2017, c. 316, §3, is
26 further amended to read:

27 J. For elections determined by ranked-choice voting, the ballot must be simple and
28 easy to understand and allow a voter to rank candidates for an office in order of
29 preference. A voter may include a write-in candidate only if that candidate is a
30 declared write-in candidate for that office pursuant to section 722-A and may include
31 no more than one write-in candidate among that voter's ranked choices for each
32 office.

33 **Sec. 5. 21-A MRSA §605-A, sub-§2, ¶A**, as enacted by PL 2011, c. 342, §15, is
34 amended to read:

35 A. The voting instruction poster must include information on how to mark the ballot,
36 including how to mark a write-in vote; how to replace the ballot if the voter makes a
37 mistake; and how to receive assistance in marking the ballot. It may include other
38 voting information. The Secretary of State may design separate instruction posters to

1 instruct the voters on how to mark a ballot for elections to be determined by
2 ranked-choice voting and those to be determined by plurality.

3 **Sec. 6. 21-A MRSA §696, first ¶**, as enacted by PL 1985, c. 161, §6, is amended
4 to read:

5 The counting of ballots is governed by the following provisions, except as provided
6 in the laws and rules governing ranked-choice voting.

7 **Sec. 7. 21-A MRSA §700**, as enacted by PL 2015, c. 146, §1, is amended to read:

8 **§700. Posting unofficial results**

9 As soon as practicable after the election return is prepared under section 711, if a
10 secure place is available at the voting place or municipal office where the public may
11 view a paper copy of the unofficial election results even when the voting place or
12 municipal office is closed, an election official shall post a paper copy of the unofficial
13 results of the election. For elections determined by ranked-choice voting, the unofficial
14 results include only the first choice votes cast.

15 **Sec. 8. 21-A MRSA §711, first ¶**, as amended by PL 2009, c. 253, §34, is further
16 amended to read:

17 As soon as the results of the election have been declared, the election return must be
18 prepared. The warden at each ward or precinct shall fill out the election return form
19 provided by the Secretary of State, showing the number of votes cast for each candidate
20 or question and recording the total number of state ballots cast in that ward or precinct.
21 For elections determined by ranked-choice voting, the warden shall report on the election
22 return only the first choice votes cast. The warden and one other election official shall
23 sign the return and immediately deliver it to the municipal clerk. The form provided by
24 the Secretary of State must include the names of all candidates, including declared write-
25 in candidates as determined by section 722-A.

26 **Sec. 9. 21-A MRSA §723, sub-§1**, as amended by PL 2017, c. 248, §5, is further
27 amended to read:

28 **1. Primary election.** In a primary election, the person who receives a plurality of
29 the votes cast for nomination to any office, as long as there is at least one vote cast for
30 that office, is nominated for that office, except for write-in candidates under paragraph A
31 and elections determined by ranked-choice voting under section 723-A.

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

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

1 **Sec. 10. 21-A MRSA §723-A, sub-§1, ¶¶F and G**, as enacted by IB 2015, c. 3,
2 §5, are amended to read:

3 F. "Last-place candidate" means the candidate with the fewest votes in a round of the
4 ranked-choice voting ~~tabulation~~ count.

5 G. "Mathematically impossible to be elected," with respect to a candidate, means
6 either:

7 (1) The candidate cannot be elected because the candidate's vote total in a round
8 of the ranked-choice voting ~~tabulation~~ count plus all votes that could possibly be
9 transferred to the candidate in future rounds from candidates with fewer votes or
10 an equal number of votes would not be enough to surpass the candidate with the
11 next-higher vote total in the round; or

12 (2) The candidate has a lower vote total than a candidate described in
13 subparagraph (1).

14 **Sec. 11. 21-A MRSA §723-A, sub-§1, ¶H-1** is enacted to read:

15 H-1. "Ranked-choice voting count" means the ranked-choice counting process
16 described in this section and in rules adopted by the Secretary of State.

17 **Sec. 12. 21-A MRSA §723-A, sub-§1, ¶J**, as enacted by IB 2015, c. 3, §5, is
18 amended to read:

19 J. "Round" means an instance of the sequence of ~~voting tabulation~~ vote counting
20 steps established in subsection 2 and in rules adopted by the Secretary of State.

21 **Sec. 13. 21-A MRSA §723-A, sub-§2**, as amended by PL 2017, c. 316, §8, is
22 further amended to read:

23 **2. Procedures.** Except as provided in ~~subsections~~ subsection 3 and 4, the following
24 procedures are used to determine the winner of an election determined by ranked-choice
25 voting. ~~Tabulation~~ The ranked-choice voting count must proceed in rounds. In each
26 round, the number of votes for each continuing candidate must be counted. Each
27 continuing ballot counts as one vote for its highest-ranked continuing candidate for that
28 round. Exhausted ballots are not counted for any continuing candidate. The round then
29 ends with one of the following 2 potential outcomes.

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

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

34 **Sec. 14. 21-A MRSA §723-A, sub-§3**, as enacted by IB 2015, c. 3, §5, is
35 amended to read:

36 **3. Ties.** A tie under this section ~~between candidates for the most votes in the final~~
37 ~~round or a tie~~ between last-place candidates in any round must be decided by lot, and the
38 candidate chosen by lot is defeated. The result of the tie resolution must be recorded and
39 reused in the event of a recount. ~~Election officials may resolve prospective ties between~~

1 candidates ~~before the election~~ A tie between candidates for the most votes in the final
2 round must be decided as provided in section 732.

3 **Sec. 15. 21-A MRSA §723-A, sub-§4, ¶A,** as enacted by IB 2015, c. 3, §5, is
4 amended to read:

5 A. The number of allowable rankings may be limited to no fewer than ~~6~~ 5.

6 **Sec. 16. 21-A MRSA §737-A, 3rd ¶,** as amended by PL 2007, c. 515, §9, is
7 further amended to read:

8 A candidate who is the apparent loser and who desires a recount must file with the
9 Secretary of State a written request for a recount within 5 business days after the election,
10 except that in an election determined by ranked-choice voting, only a candidate who
11 received one of the top 3 rankings at the end of the penultimate round of ranked-choice
12 counting may request a recount. The recount is held under the supervision of the
13 Secretary of State, who shall allow the candidate's representatives or counsel to recount
14 the ballots. The candidate may not act as a counter of ballots.

15 SUMMARY

16 This bill clarifies that "elections determined by ranked-choice voting" only occur
17 when there are 3 or more candidates for an office. This bill specifies additional layout
18 requirements for ballots containing ranked-choice contests. This bill allows the Secretary
19 of State to create a separate voter instruction poster for ranked-choice voting. This bill
20 provides that municipalities count and report only the first choice votes cast for elections
21 determined by ranked-choice voting. This bill substitutes the word "count" for the word
22 "tabulate" in reference to ranked-choice voting. This bill removes an inconsistent
23 provision regarding ties in ranked-choice contests and changes the permitted restriction
24 on the number of rankings allowed on the ballot in a ranked-choice voting contest from 6
25 to 5. This bill limits who can request a recount of a ranked-choice voting contest to the
26 candidates receiving the top 3 rankings in the penultimate round of ranked-choice
27 counting.