An Act To Create an Open and Streamlined Primary System

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DAREK M. GRANT
Secretary of the Senate

Presented by Senator BALDACCI of Penobscot.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1, sub-§27-C, as amended by PL 2019, c. 320, §1 and c. 539, §§1 and 2, is repealed and the following enacted in its place:

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

A. Open primary elections for the offices of United States Senator, United States Representative to Congress, Governor, State Senator and State Representative;

B. General elections for presidential electors; and

C. Primary elections for the office of President of the United States.

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

27-D. Elections subject to an open primary. "Elections subject to an open primary" means the elections for the offices of United States Senator, United States Representative to Congress, Governor, State Senator and State Representative.

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

27-E. Open primary election. "Open primary election" means, in elections subject to an open primary, the regular election for the election of 2 candidates, regardless of enrollment status, who will appear on the ballot for the general election.

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

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

Sec. 5. 21-A MRSA §1, sub-§35-A, as enacted by IB 2015, c. 3, §2, is amended to read:

35-A. Ranked-choice voting. "Ranked-choice voting" means the method of casting and tabulating votes in which voters rank candidates in order of preference, tabulation proceeds in sequential rounds in which last-place candidates are defeated and, in a primary election for the office of President of the United States and a general election for presidential electors, the candidate with the most votes in the final round is elected or, in an election subject to an open primary, in which the 2 candidates with the most votes in the final round are nominated to appear on the ballot for the general election.

Sec. 6. 21-A MRSA §144, sub-§2, as amended by PL 2005, c. 453, §27, is further amended to read:

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

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

Sec. 7. 21-A MRSA §144, sub-§3, as repealed and replaced by PL 2013, c. 457, §2, is amended to read:

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

Sec. 8. 21-A MRSA §321, sub-§1, as amended by PL 2005, c. 387, §4, is further amended to read:

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

Sec. 9. 21-A MRSA §334, as amended by PL 2009, c. 253, §16, is further amended to read:

§334. Qualification of candidate for primary nomination

Except as provided in section 451 for an open primary election, 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 on a form designed by the Secretary of State.

Sec. 10. 21-A MRSA §336, sub-§1, as amended by PL 2011, c. 239, §1, is further amended to read:

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

Sec. 11. 21-A MRSA §338, as corrected by RR 2019, c. 2, Pt. B, §44, is amended to read:
§338. Write-in candidates

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

Sec. 12. 21-A MRSA §339, as enacted by PL 1985, c. 161, §6, is amended to read:

§339. Time and nature of election

The primary election shall must be held on the 2nd Tuesday of June of each general election year and, other than an open primary election, is considered to be a separate election for each party which that takes part in it. This includes the duties of public officials in announcing the election, providing forms and ballots, keeping records and any other matter necessary to effect the purpose of a primary election. A primary election shall must be conducted in the same manner as the general election, as nearly as practicable, for each party.

Sec. 13. 21-A MRSA §340, sub-§1, as enacted by PL 1987, c. 423, §3, is amended to read:

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

Sec. 14. 21-A MRSA §351, first ¶, as enacted by PL 1985, c. 161, §6, is amended to read:

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

Sec. 15. 21-A MRSA §351, sub-§4 is enacted to read:

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

Sec. 16. 21-A MRSA §354, sub-§1, as amended by PL 2019, c. 371, §11, is further amended to read:

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

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

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

Sec. 17. 21-A MRSA §354, sub-§7, ¶B, as amended by PL 2013, c. 131, §12, is further amended to read:

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

Sec. 18. 21-A MRSA §354, sub-§8-A, as amended by PL 2013, c. 131, §13, is further amended to read:

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

Sec. 19. 21-A MRSA §355, sub-§1, as amended by PL 2011, c. 534, §12, is further amended to read:

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

Sec. 20. 21-A MRSA §361, first ¶, as corrected by RR 2019, c. 2, Pt. B, §48, is amended to read:

A vacancy in any federal, state or county office, in the office of an election official or in any political committee occurs when the incumbent dies, resigns, becomes disqualified or changes the incumbent's residence to an electoral division other than that from which the incumbent was elected or when the person elected fails to qualify. A vacancy in the
offices of United States Senator, United States Representative to Congress, Governor, State
Senator and State Representative also occurs at the beginning of the term of office for a
candidate who was elected at a general election for that office but who died or became
disqualified on or before the date of that general election.

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

§367. Candidate withdrawal

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

Sec. 22. 21-A MRSA §371, as repealed and replaced by PL 2019, c. 636, §6, is
amended to read:

§371. Primary election candidates; vacancy

3. Vacancy and replacement of candidates in uncontested races party primaries.
   For a primary election other than an open primary election, if a candidate for nomination
dies or becomes disqualified prior to the primary election or withdraws 70 days or more
before the primary election, the Secretary of State shall declare the vacancy pursuant to
section 362-A if no other candidate from the same political party will appear on the primary
election ballot for that office. A political committee may fill the vacancy pursuant to
section 363. The Secretary of State shall remove the former candidate's name from the
primary election ballot and shall produce new primary election ballots or amend or
supplement the primary election ballots already printed in accordance with section 376 or
604.

4. Removal of candidate's name from ballot in contested races party primaries.
The Secretary of State shall remove the name of a candidate for nomination from the primary election ballot but is not
required to declare a vacancy if, 70 days or more before the primary election, the candidate
dies, becomes disqualified or withdraws and another candidate from the same political
party will appear on the ballot for that office.

5. Death or disqualification of candidates less than 70 days before primary
election in contested races party primaries. The Secretary of State is not required to remove the name of a
candidate from the primary election ballot or declare a vacancy if a candidate dies or
becomes disqualified less than 70 days before the primary election and another candidate
from the same political party will appear on the ballot for that office. Upon receipt of
information that the candidate has died or become disqualified, the Secretary of State shall
immediately prepare and distribute to the local election officials in the candidate's electoral
district a notice informing voters that the candidate has died or become disqualified and
that a vote for that candidate will not be counted. The notice must be distributed with all
absentee ballots requested after the notice is received by the local election officials and, on
election day, must be posted outside the guardrail enclosure in accordance with section
651, subsection 2 and in each voting booth. Notice that the candidate has died or become
disqualified must also be posted on the Secretary of State's publicly accessible website.
6. Withdrawal of candidates less than 70 days before primary election in contested and uncontested races party primaries. When For a primary election other than an open primary election, when a candidate for nomination withdraws less than 70 days before the primary election, the candidate's name may not be removed from the primary election ballot and a vacancy may not be declared. Upon receipt of the notice of withdrawal, the Secretary of State shall immediately prepare and distribute to the local election officials in the candidate's electoral district a notice informing voters that the candidate has withdrawn and that a vote for that candidate will not be counted. The notice must be distributed with all absentee ballots requested after the notice is received by the local election officials and, on election day, must be posted outside the guardrail enclosure in accordance with section 651, subsection 2 and in each voting booth. Notice of the late withdrawal must also be posted on the Secretary of State's publicly accessible website.

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

8. Withdrawal, death or disqualification of candidates less than 70 days before open primary election. When a candidate for an open primary election dies, becomes disqualified or withdraws less than 70 days before the open primary election, the candidate's name may not be removed from the open primary election ballot and a vacancy may not be declared. Upon receipt of information that the candidate has died or become disqualified or upon receipt of the notice of withdrawal, the Secretary of State shall immediately prepare and distribute to the local election officials in the candidate's electoral district a notice informing voters that the candidate has died, become disqualified or withdrawn and that a vote for that candidate will not be counted. The notice must be distributed with all absentee ballots requested after the notice is received by the local election officials and, on election day, must be posted outside the guardrail enclosure in accordance with section 651, subsection 2 and in each voting booth. Notice of the late withdrawal must also be posted on the Secretary of State's publicly accessible website.

Sec. 23. 21-A MRSA §374-A, as amended by PL 2019, c. 636, §9, is further amended to read:

§374-A. General election candidates; vacancy

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

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

B. Withdraws because of a catastrophic illness, condition or injury that has permanently and continuously incapacitated the candidate and would prevent performance of the duties of the office sought, as long as the candidate or a member of the candidate's immediate family files with the Secretary of State a certificate accompanying the withdrawal request that describes the illness, condition or injury and is signed by a licensed physician; or
2. Deadline for replacement of nominee in elections not subject to open primary.

A. In an election other than an election subject to an open primary, a political committee may make a replacement nomination for the general election:

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

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

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

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

4. Withdrawal of nominees in elections subject to open primary prohibited. A candidate who is declared the winner of an open primary election pursuant to section 723, subsection 1-A may not withdraw from the general election.

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

Sec. 24. 21-A MRSA §376, sub-§1-A, as enacted by PL 2019, c. 636, §11, is
amended to read:

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

Sec. 25. 21-A MRSA §441, sub-§1, as enacted by PL 2019, c. 445, §4, is amended
to read:

1. Determination of primary. No later than November 1st of the year prior to a
presidential election year, the state committee of each party shall certify whether there is a
contest among candidates for nomination as the presidential candidate. Upon receiving the
certification from one or more parties, the Secretary of State shall announce the parties that
will have a presidential primary election, which must be held on the first Tuesday after the
first Monday in March of the presidential election year 2nd Tuesday of June of the
presidential election year.

Sec. 26. 21-A MRSA c. 5, sub-c. 9 is enacted to read:

SUBCHAPTER 9

OPEN PRIMARY ELECTIONS

§451. Qualification of candidate for open primary election; common ballot

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

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

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

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

§453. Voter at open primary election

Notwithstanding any provision of this Title to the contrary, a voter qualified to vote in the general election for offices of United States Senator, United States Representative to Congress, Governor, State Senator and State Representative may vote in the open primary election for that office regardless of the voter's enrollment status.

Sec. 27. 21-A MRSA §601, sub-§2, ¶D, as amended by PL 2009, c. 253, §24, 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, except that no blank spaces may be placed at the end of the list of nominees for the office on the general election ballot for an election subject to an open primary. These blank spaces left on the ballot under this paragraph may be used by a voter to write in the name 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. 28. 21-A MRSA §601, sub-§4, as amended by PL 2001, c. 310, §29, is further amended to read:

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

Sec. 29. 21-A MRSA §651, sub-§2, ¶B, as amended by PL 2019, c. 636, §13, is further amended by amending subparagraph (3-A) to read:

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

Sec. 30. 21-A MRSA §673, sub-§1, ¶A, as corrected by RR 2011, c. 2, §21, is amended by amending subparagraph (2) to read:
(2) Is not enrolled in the proper party, if voting in a primary election other than an open primary election;

Sec. 31. 21-A MRSA §692, sub-§2, as amended by PL 2009, c. 253, §30, is further amended to read:

2. Write-in vote. If the voter wishes to vote for a write-in candidate, the voter must write the name 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. A voter may not vote for a write-in candidate in a general election for an election subject to an open primary.

Sec. 32. 21-A MRSA §696, sub-§2, ¶E-1 is enacted to read:

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

Sec. 33. 21-A MRSA §722, sub-§1-A, as amended by PL 2019, c. 371, §26, is further amended to read:

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 declared write-in candidates pursuant to section 722-A 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."

Sec. 34. 21-A MRSA §722-A, as amended by PL 2015, c. 447, §26, is further amended to read:

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

To be considered a 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 60th day prior to the election. The candidate must meet all the other qualifications for that office. A person may not be a declared write-in candidate for the general election in an election subject to an open primary.

Sec. 35. 21-A MRSA §723, sub-§1, as amended by PL 2019, c. 320, §8, is further amended to read:

1. Primary election. In a primary election other than an open 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 office, except for write-in candidates under paragraph A and elections determined by ranked-choice voting under section 723-A.

A. A write-in candidate who complies with section 722-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. 36. 21-A MRSA §723, sub-§1-A is enacted to read:

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

Sec. 37. 21-A MRSA §723, sub-§1-B is enacted to read:

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

Sec. 38. 21-A MRSA §723, sub-§2, as amended by PL 2017, c. 316, §7, is further amended to read:

2. Other elections. In any other election not governed by subsection 1, 1-A or 1-B, except for those determined by ranked-choice voting, 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 must also comply with section 722-A.

Sec. 39. 21-A MRSA §723-A, as amended by PL 2019, c. 320, §§9 to 15 and c. 539, §3 and affected by §6, is further amended to read:

§723-A. Determination of winner in election for an office elected by ranked-choice voting

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

A. "Batch elimination" means the simultaneous defeat of multiple candidates for whom it is mathematically impossible to be elected.

B. "Continuing ballot" means a ballot that is not an exhausted ballot.

C. "Continuing candidate" means a candidate who has not been defeated.

D. "Exhausted ballot" means a ballot that does not rank any continuing candidate, contains an overvote at the highest continuing ranking or contains 2 or more sequential skipped rankings before its highest continuing ranking.

E. "Highest continuing ranking" means the highest ranking on a voter's ballot for a continuing candidate.

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

G. "Mathematically impossible to be elected," with respect to a candidate, means either:
(1) In an election other than an open primary election, the candidate cannot be elected because the candidate's vote total in a round of the ranked-choice voting count plus all votes that could possibly be transferred to the candidate in future rounds from candidates with fewer votes or an equal number of votes would not be enough to surpass the candidate with the next-higher vote total in the round; or

(1-A) In an open primary election, the candidate cannot be elected because the candidate's vote total in a round of the ranked-choice voting count plus all votes that could possibly be transferred to the candidate in future rounds from candidates with fewer votes or an equal number of votes would not be enough to surpass the 2 candidates with higher vote totals in the round; or

(2) The candidate has a lower vote total than a candidate described in subparagraph (1) or (1-A).

H. "Overvote" means a circumstance in which a voter has ranked more than one candidate at the same ranking.

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

I. "Ranking" means the number assigned on a ballot by a voter to a candidate to express the voter's preference for that candidate. Ranking number one is the highest ranking, ranking number 2 is the next-highest ranking and so on.

J. "Round" means an instance of the sequence of vote counting steps established in subsection 2 or 2-A and in rules adopted by the Secretary of State.

K. "Skipped ranking" means a circumstance in which a voter has left a ranking blank and ranks a candidate at a subsequent ranking.

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

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

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

2-A. Procedures in open primary election. Except as provided in subsections 3-A and 4, the following procedures are used to determine the winner of an open primary election determined by ranked-choice voting. The ranked-choice voting count must proceed in rounds. In each round, the number of votes for each continuing candidate must be counted. Each continuing ballot counts as one vote for its highest-ranked continuing candidate for that round. Exhausted ballots are not counted for any continuing candidate. The round then ends with one of the following 2 potential outcomes.
A. If there are 3 or fewer continuing candidates, the 2 candidates with the most votes are declared the winners of the open primary election.

B. If there are more than 3 continuing candidates, the last-place candidate is defeated and a new round begins.

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

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

4. Modification of ranked-choice voting ballot and ranked-choice voting count. Modification of a ranked-choice voting ballot and ranked-choice voting count is permitted in accordance with the following.

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

B. Two or more candidates may be defeated simultaneously by batch elimination in any round of counting.

5. Effect on rights of political parties. For all statutory and constitutional provisions in the State pertaining to the rights of political parties, the number of votes cast for a party's candidate for an office determined by ranked-choice voting is the number of votes credited to that candidate after the initial counting in the first round described in subsection 2.

5-A. Rules. The Secretary of State shall adopt rules for the proper and efficient administration of elections determined by ranked-choice voting. At a minimum, rules required under this subsection must include procedures, as determined appropriate by the Secretary of State, for requesting and conducting recounts of the results as determined in the rounds of counting described in subsection 2. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

5-B. Presidential primary elections; selection of delegates. Notwithstanding any provision of this section to the contrary, selection and allocation of delegates to a party's national presidential nominating convention must be in accordance with any reasonable procedures established at the state party convention.

6. Application. This section applies to elections held on or after January 1, 2018.

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

1. Primary election. In a primary election other than an open primary election, the Secretary of State shall notify each person involved in the tie to be present at the Secretary of State's office at a certain time. At that time, the Secretary of State shall select the nominee publicly by lot.
Sec. 41. 21-A MRSA §759, sub-§4, as amended by PL 2007, c. 455, §43, is further amended to read:

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

Sec. 42. 21-A MRSA §812, sub-§3, as enacted by PL 1985, c. 161, §6, is amended to read:

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

Sec. 43. 21-A MRSA §812, sub-§5, as enacted by PL 1985, c. 161, §6, is amended to read:

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

Sec. 44. 21-A MRSA §825, sub-§1, as corrected by RR 2019, c. 2, Pt. B, §67, is amended to read:

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

Sec. 45. 21-A MRSA §843, sub-§3, as enacted by PL 1985, c. 161, §6, is amended to read:

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

Sec. 46. 21-A MRSA §843, sub-§4, as enacted by PL 1985, c. 161, §6, is amended to read:

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

SUMMARY

This bill provides for open primary elections for the elections for United States Senator, United States Representative to Congress, Governor, State Senator and State Representative. All of the candidates for those offices, including candidates enrolled in a party and unenrolled candidates, must appear on the same open primary ballot. All
qualified voters, regardless of enrollment status, are eligible to vote in open primary elections.

The votes in an open primary election must be tabulated using ranked-choice voting, except that the 2 candidates who receive the most votes are declared the winners of the open primary and their names must appear on the ballot for the general election. If one of the 2 candidates who received the most votes at the open primary dies or becomes disqualified before the general election, that candidate's name must remain on the ballot and the voters must be notified that a vote for that candidate will be counted and, if that candidate is declared the winner of the election, a vacancy will be declared at the beginning of the term of the office for which the candidate was elected. Voters may not vote for a write-in candidate in a general election that was preceded by an open primary election. As a result, ranked-choice voting will no longer be used in general elections for United States Senator and United States Representative to Congress. Instead, the candidate who receives a plurality of votes at the general election will be elected to those offices.

The bill also changes the date of the State's presidential primary election from the Tuesday after the first Monday in March to the 2nd Tuesday of June of the presidential election year, the same day that the primary elections for United States Senator, United States Representative to Congress and state offices are held.