

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Establish Random Audits of Voting Machines

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

Sec. 1. 21-A MRS §737-B is enacted to read:

§ 737-B. Random sample recounts for the purpose of auditing voting machinery

1. Random sample recount. Following each election in an even-numbered year, the Secretary of State shall randomly select, by means of a ping-pong-ball-style lottery, a sample of .05% of all voting machines used in state elections for a manual vote recount to audit the machines' accuracy and performance. These recounts must be performed on November 11th, unless that date falls on a Saturday or Sunday, in which case the recount must take place on the first Monday following November 11th. Recounts must be performed pursuant to the requirements of section 737-A and must:

- A. Use the ballots produced or employed by machine tabulation;
- B. Be held in the offices of the Secretary of State in Augusta or at a similarly situated central location as the Secretary of State designates before the recount;
- C. Be performed by volunteer teams of notaries duly authorized by the State who are organized and trained specifically for random sample recounts by the Secretary of State. The teams must consist of enrolled and unenrolled registered voters in proportion to the percentages, by party and nonparty affiliation, of voter enrollment registered in the previous election cycle;
- D. Be open to public observation; and
- E. Serve as the final tally for the voting locations involved.

2. Escalating recount trigger. If a recount indicates a discrepancy greater than .01% between a machine tally and the recount tally conducted pursuant to subsection 1 that cannot be accounted for by voter error or ambiguity of voter intent, a further manual recount of the vote tally of an additional 1% random sample of machines from voting places that employ the same machine type as the discrepant machine must be conducted as described in subsection 1. If more than 2 recounts are triggered pursuant to the requirements of this subsection, all vote totals by machines of the same type as those found to be discrepant must be recounted. Recounts must proceed without delay. The recounted vote totals for triggered recounts serve as the final tally for those machines.

3. Statistical analysis of recount results. Before the ballots associated with any election are discarded, the Secretary of State shall undertake a statistical analysis of all recount discrepancies discovered by random sample recounts or by candidate-initiated recounts. This analysis must be published for public scrutiny 4 months prior to the disposal of any ballots as ordered by the Secretary of State. Further recounts for any election may be instituted by order of the Secretary of State upon the Secretary

of State's determination that such recounts are warranted by virtue of any statistical anomalies that the analysis performed pursuant to this subsection may have discovered. Prior to conducting a recount pursuant to this subsection, the Secretary of State must obtain a warrant issued by the Attorney General.

4. Recount costs. The Department of Secretary of State, Bureau of Corporations, Elections and Commissions, Elections Division must be reimbursed for the costs associated with recounts performed pursuant to this section as specified in this subsection.

A. Costs associated with recounts conducted pursuant to subsection 1 or 3 must be reimbursed using funds from the fund established in subsection 5.

B. Costs associated with recounts conducted pursuant to subsection 2 must be recovered from the vendor or manufacturer of the voting machines involved in those recounts unless the cause of the discrepancy is shown to be due to negligence or malfeasance on the part of state employees, in which case the costs must be borne by the State. All contracts between the State and voting machine vendors and manufacturers must contain provisions stating the requirements of this paragraph.

C. Notwithstanding the provisions of subsections 1, 2 and 3, if the amount of money in the fund established in subsection 5 is inadequate to offset the costs of implementing a recount under subsection 1 or 3, the recount procedures of this section must be temporarily limited to those for which there is sufficient funding. Recounts conducted pursuant to subsection 1 have priority over recounts required pursuant to subsection 3.

5. Maine Electoral Transparency Fund. The Maine Electoral Transparency Fund, referred to in this section as "the fund," is established to finance recounts and auditing of voting machines pursuant to this section. The fund is a special, dedicated, nonlapsing fund, and any interest generated by the fund is credited to the fund. The Secretary of State shall administer the fund.

A. The fund receives revenue from the tax checkoff established in Title 36, section 5291, allowing a resident of the State who files a tax return with the State Tax Assessor to contribute 25¢ to the fund. If a husband and wife file a joint return, each spouse may designate that 25¢ be paid. The State Tax Assessor shall report annually the amounts designated for the fund to the State Controller, who shall transfer that amount to the fund.

B. In addition to the contributions described in paragraph A, the fund may receive other voluntary contributions. Any contributions received pursuant to this paragraph may be used only for the purposes of subsection 1 and may not be transferred to the General Fund.

C. If the fund, for any 2 consecutive election cycles, produces a surplus of more than 100% of the previous cycle's expenses related to subsections 1 and 3, then 50% of that surplus may be assigned, at the Secretary of State's discretion, to the operating budget of the Department of Secretary of State, Bureau of Corporations, Elections and Commissions, Elections Division for that year.

Sec. 2. 36 MRSA §5291 is enacted to read:

§ 5291. Contribution to Maine Electoral Transparency Fund; voluntary checkoff

1. Designation. Resident taxpayers may designate that 25¢ of their taxes be deposited in the Maine Electoral Transparency Fund in accordance with Title 21-A, section 737-B, subsection 5, paragraph A.

2. Forms. The State Tax Assessor shall provide on the first page of the income tax form a space for the filing individual to indicate whether that filer wishes to pay 25¢, or 50¢ if filing a joint return, from the General Fund to finance the Maine Electoral Transparency Fund created in Title 21-A, section 737-B, subsection 5.

3. Transfer of funds. The State Tax Assessor shall transfer funds pursuant to this section from the General Fund in accordance with Title 21-A, section 1124.

SUMMARY

This bill establishes a procedure for regular scientific audits of the State's election machinery on a biennial basis, by means of manually recounting the ballots of a random sample of all voting machines in the State. The bill also establishes an escalating recount procedure in the event that unacceptable discrepancies are discovered during the random sample recount process, and it mandates the regular statistical analysis of those discrepancies. This bill establishes the Maine Electoral Transparency Fund to provide reimbursement for costs incurred in performing the recounts. Resources of the fund come from an income tax checkoff and voluntary contributions. Contingency plans for shortages and surpluses in the fund are also addressed.