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Date: (Filing No. H-)

STATE AND LOCAL GOVERNMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1078, L.D. 1476, Bill, “An Act To Clarify Recounts in Municipal Elections”

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 30-A MRSA §2531-B, as amended by PL 2017, c. 191, §1, is repealed and the following enacted in its place:

§2531-B. Recount of an election for office

This section governs all recounts in any election for municipal office.

4. Recount request and procedure. A candidate, including a write-in candidate, other than the declared winner in an election may apply to the municipal clerk in writing for a recount. Written recount requests must be received by the clerk within 5 business days after the day of the contested election or within 5 business days after an inspection pursuant to section 2530-A in order to be valid.

5. Public proceeding. A recount is a public proceeding open to public attendance, subject to reasonable restrictions necessary to protect recount integrity or resulting from space limitations.

6. Recount security. The municipal clerk shall maintain control over the ballots and other recount materials. No recount personnel other than the clerk may have access to the areas where ballots are stored unless accompanied by the clerk or the clerk's designee. A person who causes a disruption of the recount process may be removed from the area at the discretion of the clerk.

7. Amount of deposit. A candidate requesting a recount shall pay a deposit to the municipal clerk when the recount is requested in an amount determined by the municipal clerk, which must be at least 50% of the reasonable estimate of the cost to the municipality performing the recount.

COMMITTEE AMENDMENT

1 **8. Deposit not required.** Notwithstanding subsection 7, a deposit is not required for
2 a recount if the percentage difference of the total votes of the official tabulation is equal
3 to or less than:

4 A. Two and one-half percent, if the combined vote for the candidates is 1,000 or less;

5 B. Two percent, if the combined vote for the candidates is 1,001 to 5,000; or

6 C. One and one-half percent, if the combined vote for the candidates is 5,001 or
7 over.

8 For purposes of this subsection, "percentage difference" means the difference between the
9 percentage of the total votes for an office received by the candidate requesting a recount
10 and the percentage of the total votes for that office received by the nearest winning
11 candidate.

12 **9. Forfeiture or refund of deposit.** If a recount changes the result of an election, a
13 deposit under subsection 7 must be returned to the candidate who paid the deposit. If the
14 recount does not change the result of the election, the municipality shall calculate the
15 actual cost to the municipality of performing the recount. If the deposit was greater than
16 the actual cost, the overpayment must be refunded to the candidate who paid the deposit.
17 If the actual cost was greater than the deposit, the candidate who requested the recount
18 shall pay the remainder of the actual cost to the municipality. A candidate who is not
19 required to pay a deposit pursuant to subsection 8 may not be charged for the recount
20 regardless of whether the recount changes the result of the election.

21 **10. Date of recount and notice.** When a recount request has been filed pursuant to
22 subsection 4, along with a deposit if a deposit is required pursuant to subsection 7, the
23 municipal clerk immediately shall set a date for the recount, which must be held as soon
24 as reasonably possible at a date and time that affords the candidate who requested the
25 recount a reasonable opportunity to be present. The municipal clerk shall notify the
26 public, the municipal officers, the candidate who filed the recount request and all other
27 candidates on that election ballot of the recount date and location. Notice must be posted
28 pursuant to Title 1, section 406.

29 **11. Procedure at recount.** A recount in an election of a municipal officer must be
30 conducted according to the procedures in this subsection unless the municipal legislative
31 body adopts the recount procedures of Title 21-A, section 737-A and the rules adopted
32 pursuant to that section, except that Title 21-A, section 737-A, subsections 1, 5 and 12
33 and the duties of the State Police do not apply.

34 A. The municipal clerk shall publicly explain the recount procedure at the start of the
35 recount and shall supervise the sorting and hand counting of the votes in public with
36 assistance from counters appointed by the clerk.

37 B. A candidate may provide counters to conduct the recount under the supervision of
38 the municipal clerk. If an insufficient number of counters is provided, the clerk shall
39 supply counters. Municipal officers and candidates on that election ballot may not
40 serve as counters.

41 C. The municipal clerk and counters shall follow all applicable laws and the rules for
42 determining voter intent adopted by the Secretary of State pursuant to Title 21-A,
43 section 696, subsection 6.

1 D. If any ballots are disputed as to voter intent, the candidates may resolve the
2 dispute by consensus in accordance with rules for determining voter intent adopted
3 by the Secretary of State pursuant to Title 21-A, section 696, subsection 6. If
4 consensus cannot be reached, those disputed ballots must be set aside. If the number
5 of disputed ballots potentially affects the outcome of the recount, the municipal clerk
6 shall forward the disputed ballots to the clerk of the nearest Superior Court in the
7 county in which the election was held.

8 E. Upon written request, the municipal clerk shall make the incoming voting list and
9 absentee ballot materials, along with all records required by law to be kept in
10 connection with the election, available for inspection, unless those materials have
11 been requested as part of a state recount.

12 F. After the recount, the municipal clerk shall reseal the package of ballots and
13 incoming voting list and shall note on the package the fact that the recount was held
14 and the date of the recount.

15 G. In order to withdraw from a recount, a candidate must notify the municipal clerk
16 of the intent to withdraw and the reason for withdrawal. The notice must be signed by
17 the candidate, notarized and delivered to the municipal clerk prior to or during the
18 scheduled recount. In the event of a withdrawal, the final election day tabulation is
19 considered the final result.

20 **12. Results of recount.** Within 24 hours after the results of the recount are
21 determined, the municipal clerk shall prepare, sign and issue a final recount tabulation.

22 **Sec. 2. 30-A MRSA §2532,** as amended by PL 2017, c. 191, §2, is further
23 amended to read:

24 **§2532. Referendum recount procedure**

25 In the case of a referendum, a recount must be granted upon written application of
26 10% or 100, whichever is less, of the registered voters in the municipality. The
27 application must designate a person to be the official representative of the registered
28 voters requesting the recount including the person's legal name, mailing address,
29 residence address and telephone number. An official representative for the registered
30 voters opposing the recount may be established by submission of an affidavit signed by
31 10 registered voters of the municipality. The time limits, rules and all other matters
32 applying to candidates under section 2531-B apply equally to applicants for the recount.
33 Except as otherwise provided in this section, the method of conducting a referendum
34 recount is governed by Title 21-A, section 737-A a referendum recount, except that
35 provisions in section 2531-B applicable to the candidate requesting the recount and
36 candidates not requesting the recount apply, for purposes of this section, to the official
37 representative of the referendum recount and the official representative, if any, of the
38 voters opposed to the recount, respectively.'

39 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
40 section number to read consecutively.

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SUMMARY

This amendment strikes the bill. It repeals and replaces the Maine Revised Statutes, Title 30-A, section 2531-B to add an optional process for the recount of municipal elections. Current section 2531-B requires municipalities to follow the recount procedures established for statewide elections in Title 21-A. The amendment amends the referendum recount procedures in Title 30-A, section 2532 by establishing a process to identify the official representative of the voters seeking a referendum recount and an official representative of those opposed to the referendum recount.