

Date: (Filing No. H-)

VETERANS AND LEGAL AFFAIRS

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT " " to H.P. 833, L.D. 1155, "An Act To Require Election Transparency and Audits"

Amend the bill by striking out all of section 1 and inserting the following:

'Sec. 1. 5 MRSA §12004-G, sub-§31-D is enacted to read:

31-D.

Secretary of State Post-election Audit Board Legislative Per Diem 21-A MRSA §726

Sec. 2. 21-A MRSA §610 is enacted to read:

§610. Election transparency

1. Guide to election procedures. The Secretary of State shall produce and publicly disseminate a guide to election laws, rules and procedures beginning February 1, 2022 and every 2 years thereafter. The guide must describe:

- A. Requirements for polling places and the conduct of elections;
B. Devices and software used to capture, interpret or tally votes and the capabilities and deployment of the devices and software;
C. Duties of election officials on, before and after election day;
D. Opportunities for citizens to monitor election procedures; and
E. Other election laws, rules or procedures that the Secretary of State determines appropriate for the public interest.

2. Log of public concerns. The Secretary of State shall implement a system for collecting and logging concerns from members of the public regarding the conduct of elections. The log must describe each concern and any action taken to address the concern. Instructions for reporting concerns under this subsection must be posted at all polling places and included in the guide produced under subsection 1.

COMMITTEE AMENDMENT

1 **3. Election report.** Beginning December 15, 2023 and every 2 years thereafter, the
2 Secretary of State shall submit a report to the joint standing committee of the Legislature
3 having jurisdiction over elections matters that includes a list of all election-related studies
4 or reports issued by the Secretary of State after the date of the previous report as well as
5 the following information regarding the most recent general election and all subsequent
6 elections:

7 A. A summary of the election-related concerns received and logged under subsection
8 2;

9 B. A summary of any post-election audits conducted by the Post-election Audit Board
10 established under Title 5, section 12004-G, subsection 31-D;

11 C. A summary of any recounts conducted, including a description of any discrepancies
12 in vote totals and explanations for discrepancies when available; and

13 D. Recommendations for remedying any problems identified in the election process at
14 the state or local level.

15 **4. Rules.** The Secretary of State may adopt routine technical rules as defined in Title
16 5, chapter 375, subchapter 2-A to carry out the purposes of this section.

17 **Sec. 3. 21-A MRSA §726** is enacted to read:

18 **§726. Post-election Audit Board established**

19 **1. Establishment; membership.** The Post-election Audit Board, referred to in this
20 section as "the board" and established under Title 5, section 12004-G, subsection 31-D,
21 consists of 5 members, appointed by the Governor as follows.

22 A. Two members of the board must be enrolled in the political party holding the largest
23 number of seats in the Legislature and 2 members of the board must be enrolled in the
24 political party holding the 2nd largest number of seats in the Legislature. The Governor
25 shall appoint the members of the board assigned to each political party from a list of 3
26 qualified nominees enrolled in that party jointly presented to the Governor by January
27 1, 2022 and as needed after that date by the Senate caucus leader and House caucus
28 leader of each political party. For purposes of this paragraph, "House caucus leader"
29 and "Senate caucus leader" have the same meanings as in section 1053-C, subsection
30 1, paragraphs A and C, respectively.

31 B. One member of the board must be enrolled in a political party that does not meet
32 the requirements of paragraph A or, if no such party exists, must be unenrolled. Prior
33 to appointing this member, the Governor shall consult with each qualified party, if any,
34 that does not meet the requirements of paragraph A.

35 **2. Terms.** Members of the board serve for a term of 4 years, except that the first of
36 the 2 members appointed from each political party under subsection 1, paragraph A serves
37 a 2-year term. A member may not serve more than 2 consecutive terms.

38 **3. Repeal.** This section is repealed April 15, 2027.

39 **Sec. 4. 21-A MRSA §727** is enacted to read:

40 **§727. Post-election audits**

1 **1. Definition.** For purposes of this section, "eligible election" includes any contested
2 election for state or federal office and any election on a statewide referendum question.

3 **2. Authority.** Beginning January 1, 2024, the Post-election Audit Board established
4 under Title 5, section 12004-G, subsection 31-D shall conduct post-election audits of
5 selected eligible elections pursuant to this section.

6 **3. Post-election audit design.** Post-election audits must be conducted on the basis of
7 statistical principles designed to limit the risk that certified election returns may produce
8 an incorrect outcome. The risk limit must be established by the Post-election Audit Board
9 prior to each eligible election. Auditors shall visually examine each original, paper ballot
10 selected for the audit and shall review the records documenting the chain of custody and
11 secure storage of ballots as well as any additional documents identified by the Post-election
12 Audit Board.

13 **4. Selection of elections to be audited.** Eligible elections to be audited must be
14 selected by the Post-election Audit Board.

15 **5. Public proceeding.** A post-election audit is a public proceeding as defined in Title
16 1, section 402, subsection 2. Notwithstanding Title 1, section 403, the Post-election Audit
17 Board may limit the number of members of the public and representatives of the media
18 who may attend if there is insufficient space and the presence of additional individuals
19 would interfere with the conduct of the post-election audit. The public notice required by
20 Title 1, section 406 must be provided at least 24 hours prior to the commencement of the
21 post-election audit.

22 **6. Rulemaking.** The Secretary of State may adopt rules to implement this section.
23 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
24 chapter 375, subchapter 2-A.

25 **7. Repeal.** This section is repealed April 15, 2027.'

26 Amend the bill by striking out all of sections 3 and 4 and inserting the following:

27 **Sec. 3. Post-election Audit Board to conduct pilot post-election audit.** The
28 Post-election Audit Board as established under the Maine Revised Statutes, Title 5, section
29 12004-G, subsection 31-D shall design and conduct a pilot post-election audit based on
30 statistical principles designed to limit the risk that certified election returns may produce
31 an incorrect outcome. In designing and conducting the pilot post-election audit, the Post-
32 election Audit Board shall consult with state and municipal election officials, election
33 security advocates and other experts in the field of election audits and recounts. The pilot
34 post-election audit must be conducted following the general election scheduled for
35 November 2022. By February 1, 2023, the Post-election Audit Board shall submit a report
36 on the pilot post-election audit with any recommended legislation to the joint standing
37 committee of the Legislature having jurisdiction over elections matters. The joint standing
38 committee may report out legislation based upon the report to the First Regular Session of
39 the 131st Legislature.

40 **Sec. 4. Appropriations and allocations.** The following appropriations and
41 allocations are made.

42 SECRETARY OF STATE, DEPARTMENT OF
43 Bureau of Administrative Services and Corporations 0692

1 Initiative: Provides funding for equipment and office supplies costs.

2	GENERAL FUND	2021-22	2022-23
3	All Other	\$81,093	\$10,981
4			
5	GENERAL FUND TOTAL	<u>\$81,093</u>	<u>\$10,981</u>

6

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

9

SUMMARY

10 This amendment, which is a minority report of the committee, clarifies that the
11 Secretary of State must produce and publicly disseminate the guide to election procedures
12 required by the bill by February 1st of each even-numbered year. The amendment replaces
13 the bill's requirement that the Secretary of State develop an election complaint process with
14 a requirement that the Secretary of State implement a system for collecting and logging
15 concerns from members of the public regarding the conduct of elections. A summary of
16 these concerns must be included in the election report submitted to the joint standing
17 committee of the Legislature having jurisdiction over elections matters by December 15th
18 of each odd-numbered year.

19 The amendment also establishes a Post-election Audit Board, comprised of 2 members
20 from each of the 2 political parties holding the largest number of seats in the Legislature
21 and one member of a minor political party or who is unenrolled. The Post-election Audit
22 Board must design and conduct a risk-limiting pilot post-election audit after the November
23 2022 general election. Beginning January 1, 2024, the board shall conduct risk-limiting
24 post-election audits according to the procedures established by the Secretary of State by
25 rule on any contested election for state or federal office or any election on a statewide
26 referendum question that is selected by the board for audit. The provision governing the
27 requirement to conduct post-election audits is repealed April 15, 2027.

28

FISCAL NOTE REQUIRED

29

(See attached)