



# 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

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Legislative Document

No. 1959

S.P. 795

In Senate, May 18, 2023

### **An Act Regarding Open Primary Elections and Ranked-choice Voting**

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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 BALDACCI of Penobscot.

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2 **Sec. 1. 21-A MRSA §1, sub-§27-C**, as repealed and replaced by PL 2021, c. 273,  
3 §1, is repealed and the following enacted in its place:

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

8 A. Open primary elections for the office of United States Senator, United States  
9 Representative to Congress, Governor, State Senator or State Representative;

10 B. General elections for presidential electors, United States Senator and United States  
11 Representative to Congress; and

12 D. Primary elections for the office of President of the United States.

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

14 **27-E. Elections subject to an open primary.** "Elections subject to an open primary"  
15 means the elections for the office of United States Senator, United States Representative to  
16 Congress, Governor, State Senator or State Representative.

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

18 **27-F. Open primary election.** "Open primary election" means, in elections subject  
19 to an open primary, the regular election for the election of 2 candidates for the office of  
20 Governor, State Senator or State Representative and 4 candidates for the office of United  
21 States Senator or United States Representative to Congress, regardless of enrollment status,  
22 who will appear on the ballot for the general election.

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

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

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

30 **35-A. Ranked-choice voting.** "Ranked-choice voting" means the method of casting  
31 and tabulating votes in which voters rank candidates in order of preference, tabulation  
32 proceeds in sequential rounds in which last-place candidates are defeated and the candidate  
33 with the most votes in the final round is elected or, in an election for the office of President  
34 of the United States, in which the 4 candidates with the most votes in the final round are  
35 nominated to appear on the ballot for the general election.

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

38 **2. Party designation removed.** On receipt of the application, the registrar shall  
39 remove the party designation of the applicant from the central voter registration system.  
40 The registrar shall indicate in the central voter registration system that the applicant is  
41 ineligible to vote at a caucus or primary election, other than an open primary election, for

1 15 days by designating the party enrollment field with the letter "X." Fifteen days after  
2 receiving the application, the registrar shall enroll the applicant in the party requested and  
3 enter the new party designation in the party enrollment field.

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

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

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

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

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

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

25 **§334. Qualification of candidate for primary nomination**

26 A Except as provided in section 451 for an open primary election, a candidate for  
27 nomination by primary election must file a primary petition and consent under sections 335  
28 and 336. The candidate must be enrolled, on or before March 15th, in the party named in  
29 the petition and must be eligible to file a petition as a candidate for nomination by primary  
30 election under section 144, subsection 3. The registrar in the candidate's municipality of  
31 residence must certify to that fact on a form designed by the Secretary of State.

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

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

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

1           **§338. Write-in candidates**

2           A Except as provided in section 452 for an open primary election, a person whose name  
3 will not appear on the printed primary ballot because that person did not file a petition and  
4 consent under sections 335 and 336, but who fulfills the other qualifications under section  
5 334, may be nominated at the primary election as a write-in candidate in accordance with  
6 section 723, subsection 1.

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

8           **§339. Time and nature of election**

9           The Except as otherwise provided in this section, the primary election ~~shall~~ must be  
10 held on the 2nd Tuesday of June of each general election year and, unlike in an open  
11 primary election, is considered to be a separate election for each party ~~which that~~ takes part  
12 in it. This includes the duties of public officials in announcing the election, providing forms  
13 and ballots, keeping records and any other matter necessary to effect the purpose of a  
14 primary election. A primary election ~~shall~~ must be conducted in the same manner as the  
15 general election, as nearly as practicable, ~~for each party~~. In a presidential election year, an  
16 open primary must be conducted on the same date as the presidential primary election as  
17 determined by section 441.

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

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

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

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

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

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

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

39           **1. Content.** A nomination petition must contain the name of only one candidate, the  
40 candidate's place of residence, the office sought and electoral division. A nomination  
41 petition may contain as many separate papers as necessary and may contain the candidate's  
42 consent required by section 355. It may also contain the candidate's political designation.

1 This designation may not exceed 3 words in length, may not incorporate the candidate's  
2 name or the designation or an abbreviation of the designation of a party that is qualified to  
3 ~~nominate candidates by~~ participate in a primary election and may not consist of or comprise  
4 language that is obscene, contemptuous, profane or prejudicial, promotes abusive or  
5 unlawful activity or violates any other provision of the laws of this State with respect to  
6 names. A candidate who intends to form a new party about that person's candidacy must  
7 use the proposed party's designation.

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

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

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

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

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

23 **8-A. Filed with the Secretary of State.** A nomination petition must be filed in the  
24 office of the Secretary of State by 5 p.m. on June 1st in the election year in which it is to  
25 be used, except that a nomination petition for a candidate for an open primary election must  
26 be filed in the office of the Secretary of State by 5 p.m. on March 15th of the election year  
27 in which it is to be used and petitions for a slate of candidates for the office of presidential  
28 elector must be filed in the office of the Secretary of State by 5 p.m. on August 1st in the  
29 election year in which the petitions are to be used.

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

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

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

42 A vacancy in any federal, state or county office, in the office of an election official or  
43 in any political committee occurs when the incumbent dies, resigns, becomes disqualified

1 or changes the incumbent's residence to an electoral division other than that from which  
2 the incumbent was elected or when the person elected fails to qualify. A vacancy in the  
3 office of United States Senator, United States Representative to Congress, Governor, State  
4 Senator or State Representative also occurs at the beginning of the term of office for a  
5 candidate who was elected at a general election for that office but who died or became  
6 disqualified on or before the date of that general election.

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

9 **§367. Candidate withdrawal**

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

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

15 **§371. Primary election candidates; vacancy**

16 **3. Vacancy and replacement of candidates in uncontested ~~raees~~ party primaries.**  
17 ~~If~~ For a primary election other than an open primary election, if a candidate for nomination  
18 dies or becomes disqualified prior to the primary election or withdraws 70 days or more  
19 before the primary election, the Secretary of State shall declare the vacancy pursuant to  
20 section 362-A if no other candidate from the same political party will appear on the primary  
21 election ballot for that office. A political committee may fill the vacancy pursuant to  
22 section 363. The Secretary of State shall remove the former candidate's name from the  
23 primary election ballot and shall produce new primary election ballots or amend or  
24 supplement the primary election ballots already printed in accordance with section 376 or  
25 604.

26 **4. Removal of candidate's name from ballot in contested ~~raees~~ party primaries.**  
27 ~~The~~ For a primary election other than an open primary election, the Secretary of State shall  
28 remove the name of a candidate for nomination from the primary election ballot but is not  
29 required to declare a vacancy if, 70 days or more before the primary election, the candidate  
30 dies, becomes disqualified or withdraws and another candidate from the same political  
31 party will appear on the ballot for that office.

32 **5. Death or disqualification of candidates less than 70 days before primary**  
33 **election in contested ~~raees~~ party primaries.** ~~The~~ For a primary election other than an  
34 open primary election, the Secretary of State is not required to remove the name of a  
35 candidate from the primary election ballot or declare a vacancy if a candidate dies or  
36 becomes disqualified less than 70 days before the primary election and another candidate  
37 from the same political party will appear on the ballot for that office. Upon receipt of  
38 information that the candidate has died or become disqualified, the Secretary of State shall  
39 immediately prepare and distribute to the local election officials in the candidate's electoral  
40 district a notice informing voters that the candidate has died or become disqualified and  
41 that a vote for that candidate will not be counted. The notice must be distributed with all  
42 absentee ballots requested after the notice is received by the local election officials and, on  
43 election day, must be posted outside the guardrail enclosure in accordance with section

1 651, subsection 2 and in each voting booth. Notice that the candidate has died or become  
2 disqualified must also be posted on the Secretary of State's publicly accessible website.

3 **6. Withdrawal of candidates less than 70 days before primary election in**  
4 **contested and uncontested races party primaries.** ~~When~~ For a primary election other  
5 than an open primary election, when a candidate for nomination withdraws less than 70  
6 days before the primary election, the candidate's name may not be removed from the  
7 primary election ballot and a vacancy may not be declared. Upon receipt of the notice of  
8 withdrawal, the Secretary of State shall immediately prepare and distribute to the local  
9 election officials in the candidate's electoral district a notice informing voters that the  
10 candidate has withdrawn and that a vote for that candidate will not be counted. The notice  
11 must be distributed with all absentee ballots requested after the notice is received by the  
12 local election officials and, on election day, must be posted outside the guardrail enclosure  
13 in accordance with section 651, subsection 2 and in each voting booth. Notice of the late  
14 withdrawal must also be posted on the Secretary of State's publicly accessible website.

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

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

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

34 **§374-A. General election candidates; vacancy**

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

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

42 B. Withdraws because of a catastrophic illness, condition or injury that has  
43 permanently and continuously incapacitated the candidate and would prevent  
44 performance of the duties of the office sought, as long as the candidate or a member of

1 the candidate's immediate family files with the Secretary of State a certificate  
2 accompanying the withdrawal request that describes the illness, condition or injury and  
3 is signed by a licensed physician; or

4 C. Dies prior to the general election.

5 **2. Deadline for replacement of nominee in elections not subject to open primary.**

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

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

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

12 **2-A. Ballot procedure for replacement candidates in elections not subject to open**  
13 **primary.** If In an election other than an election subject to an open primary, if a political  
14 party makes a replacement nomination for the general election by the deadline established  
15 in subsection 2, the Secretary of State shall produce new general election ballots or amend  
16 or supplement general election ballots already printed in accordance with section 376 or  
17 604.

18 **3. Deadline for removal of candidate's name from general election ballot in**  
19 **elections not subject to open primary.** The name of a candidate for an office on the  
20 general election ballot who withdraws for any reason 70 days or more before the general  
21 election must be removed from the ballot. If a candidate for an office on the general  
22 election ballot withdraws less than 70 days before the general election and meets the criteria  
23 of subsection 1, paragraph B or C, the candidate's name must be removed from the general  
24 election ballot in accordance with section 376 or the general election ballot must be  
25 amended or supplemented in accordance with section 604. If a candidate for an office on  
26 the general election ballot withdraws less than 70 days before the general election and does  
27 not meet the criteria of subsection 1, paragraph B or C, the candidate's name will not be  
28 removed from the ballot, but upon receipt of the notice of withdrawal required by section  
29 367, the Secretary of State shall immediately prepare and distribute to the local election  
30 officials in the candidate's electoral district a notice informing voters that the candidate has  
31 withdrawn and that a vote for that candidate will not be counted. The notice must be  
32 distributed with all absentee ballots requested after the notice is received by the local  
33 election officials and, on election day, must be posted outside the guardrail enclosure in  
34 accordance with section 651, subsection 2 and in each voting booth. Notice of a candidate's  
35 withdrawal less than 70 days before the general election must also be posted on the  
36 Secretary of State's publicly accessible website. This subsection does not apply to an  
37 election subject to an open primary.

38 **4. Withdrawal of open primary winner prohibited.** A candidate who is declared  
39 the winner of an open primary election pursuant to section 723, subsection 1-A may not  
40 withdraw from the general election.

41 **5. Death or disqualification of nominees in elections subject to open primary.** If  
42 a candidate who is declared the winner of an open primary election pursuant to section 723,  
43 subsection 1-A dies or becomes disqualified at any time before the general election, the  
44 candidate's name will not be removed from the ballot. Upon receipt of information that the



1 candidate has died or become disqualified, the Secretary of State shall immediately prepare  
2 and distribute to local election officials in the candidate's electoral district and on the  
3 Secretary of State's publicly accessible website a notice informing voters that, although the  
4 candidate has died or become disqualified, a vote for that candidate will be counted and, if  
5 the candidate is declared the winner of the election, a vacancy will be declared at the  
6 beginning of the term for which the candidate was elected. The notice must be distributed  
7 with all absentee ballots requested after the notice is received by the local election officials  
8 and, on election day, must be posted outside the guardrail enclosure in accordance with  
9 section 651, subsection 2 and in each voting booth.

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

12 **1-A. Removal of candidate's name from ballots.** The Except as provided in section  
13 374-A, subsection 4, the Secretary of State shall remove a candidate's name from the ballot  
14 if the candidate withdraws for any reason 70 days or more before any primary or general  
15 election.

16 **Sec. 25. 21-A MRSA §441, sub-§1**, as amended by PL 2021, c. 273, §7, is further  
17 amended to read:

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

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

## 25 SUBCHAPTER 9

### 26 OPEN PRIMARY ELECTIONS

#### 27 **§451. Qualification of candidate for open primary election; same ballot**

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

32 **1. Candidate enrolled in a party.** Is enrolled in a party qualified to participate in a  
33 primary election under section 301, 302 or 303, enrolled in that party on or before March  
34 15th of the election year and filed a primary petition and consent that meets the  
35 requirements of sections 335 and 336, subject to challenge and appeal under section 337.  
36 The party designation of a candidate who meets the requirements of this subsection must  
37 be printed on the open primary election ballot; or

38 **2. Unenrolled candidates.** Is not enrolled in a party qualified to participate in a  
39 primary election; filed a nomination petition and consent that meets the requirements of  
40 sections 351, 354 and 355, subject to challenge and appeal under section 356; and was  
41 certified by the Secretary of State pursuant to section 357. The party designation, if any,

1 of a candidate who meets the requirements of this subsection may not be printed on the  
2 open primary election ballot.

3 **§452. Declared write-in candidates**

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

8 **§453. Voter at open primary election**

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

13 **Sec. 27. 21-A MRSA §601, sub-§2, ¶D**, as amended by PL 2009, c. 253, §24, is  
14 further amended to read:

15 D. At the end of the list of candidates for each office, there must be left as many blank  
16 spaces as there are vacancies to be filled, except that no blank spaces may be placed at  
17 the end of the list of nominees for the office on the general election ballot for an election  
18 subject to an open primary. These The blank spaces left on the ballot under this  
19 paragraph may be used by a voter to write in the name of a person for whom the voter  
20 desires to vote, as provided in section 691, subsection 2 for a primary election or section  
21 692, subsection 2 for a general election.

22 **Sec. 28. 21-A MRSA §601, sub-§4**, as amended by PL 2001, c. 310, §29, is further  
23 amended to read:

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

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

35 (3-A) A supplemental notice correcting an error or providing information on a  
36 replacement candidate prepared under section 604 ~~or~~; a notice informing voters  
37 that a vote for a candidate will not be counted because the candidate has died or  
38 has withdrawn prepared under section 371, subsection 5 or 6 or section 374-A,  
39 subsection 3; or a notice informing voters that, although a candidate has died or  
40 become disqualified, a vote for that candidate will be counted and, if that candidate  
41 is declared the winner of the election, a vacancy will be declared at the beginning  
42 of the term of the office for which the candidate was elected, prepared under  
43 section 374-A, subsection 5, next to the sample ballots;

1           **Sec. 30. 21-A MRSA §673, sub-§1, ¶A**, as corrected by RR 2011, c. 2, §21, is  
2 amended by amending subparagraph (2) to read:

3           (2) Is not enrolled in the proper party, if voting in a primary election other than an  
4 open primary election;

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

7           **2. Write-in vote.** If the voter wishes to vote for a write-in candidate, the voter must  
8 write the name of the candidate in the blank space provided at the end of the list of nominees  
9 for the office in question. The voter must then mark the ballot as instructed in the directions  
10 on the ballot. A sticker may not be used to vote for a write-in candidate. A voter may not  
11 vote for a write-in candidate in a general election for an election subject to an open primary.

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

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

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

17           **1-A. Form of tabulation.** The tabulation must include the total votes for each question  
18 choice or candidate whose name appeared on the ballot. The tabulation also must include  
19 the total votes for any declared write-in candidates pursuant to section 722-A as follows.

20           A. For a write-in candidate who receives 5% or more of the votes cast for that office,  
21 the Secretary of State shall report the votes under the candidate's name.

22           B. For a write-in candidate who receives less than 5% of the votes cast for that office,  
23 the Secretary of State shall report the votes under the designation "others."

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

26           **§722-A. Determination of declared write-in candidate**

27           To be considered a declared write-in candidate, a person must file a declaration of  
28 write-in candidacy with the Secretary of State, on a form approved by the Secretary of  
29 State, on or before 5 p.m. on the 60th day prior to the election. The candidate must meet  
30 all the other qualifications for that office. A person may not be a declared write-in  
31 candidate for the general election in an election subject to an open primary.

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

34           **1. Primary election.** In a primary election other than an open primary election, the  
35 person who receives a plurality of the votes cast for nomination to any office, as long as  
36 there is at least one vote cast for that office, is nominated for that office, except for write-  
37 in candidates under paragraph A and elections determined by ranked-choice voting under  
38 section 723-A.

39           A. A write-in candidate who complies with section 722-A and who fulfills the other  
40 qualifications under section 334 may be nominated at the primary election if that person  
41 receives a number of valid write-in votes equal to at least twice the minimum number

1 of signatures required under section 335, subsection 5 on a primary petition for a  
2 candidate for that office.

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

5 **Sec. 36. 21-A MRSA §723, sub-§1-A** is enacted to read:

6 **1-A. Open primary election.** In an open primary election for the office of Governor,  
7 State Senator or State Representative, the 2 persons who receive the most votes cast as  
8 determined by section 723-A must be declared the winners of the open primary election  
9 and are nominated to be placed on the general election ballot for that office. In an open  
10 primary for the office of United States Senator or United States Representative to Congress,  
11 the 4 persons who receive the most votes cast as determined by section 723-A must be  
12 declared the winners of the open primary election and placed on the general election ballot  
13 for that office. The Secretary of State shall immediately certify by mail the nomination of  
14 each person to be placed on the general election ballot pursuant to this subsection.

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

16 **1-B. General election following open primary.** In a general election for the office  
17 of Governor, State Senator or State Representative, the nominee who receives a plurality  
18 of the votes cast for that office, as long as there is at least one vote cast for that office, is  
19 elected to that office. A write-in candidate may not be elected in a general election for an  
20 election subject to an open primary.

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

23 **2. Other elections.** In any other election not governed by subsection 1, 1-A or 1-B,  
24 except for those determined by ranked-choice voting, the person who receives a plurality  
25 of the votes cast for election to any office, as long as there is at least one vote cast for that  
26 office, is elected to that office, except that a write-in candidate must also comply with  
27 section 722-A.

28 **Sec. 39. 21-A MRSA §723-A, sub-§1**, as amended by PL 2019, c. 320, §§9 to 11,  
29 is further amended to read:

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

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

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

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

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

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

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

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

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

10 (1-A) In an open primary election for Governor, State Senator or State  
11 Representative, the candidate cannot be elected because the candidate's vote total  
12 in a round of the ranked-choice voting count plus all votes that could possibly be  
13 transferred to the candidate in future rounds from candidates with fewer votes or  
14 an equal number of votes would not be enough to surpass the 2 candidates with  
15 higher vote totals in the round;

16 (1-B) In an open primary election for United States Senator or United States  
17 Representative to Congress, the candidate cannot be elected because the  
18 candidate's vote total in a round of the ranked-choice voting count plus all votes  
19 that could possibly be transferred to the candidate in future rounds from candidates  
20 with fewer votes or an equal number of votes would not be enough to surpass the  
21 4 candidates with higher vote totals in the round; or

22 (2) The candidate has a lower vote total than a candidate described in subparagraph  
23 (1), (1-A) or (1-B).

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

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

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

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

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

35 **Sec. 40. 21-A MRSA §723-A, sub-§2**, as amended by PL 2019, c. 320, §12, is  
36 further amended to read:

37 **2. Procedures in election that is not open primary election.** Except as provided in  
38 subsections 3 and 4, the following procedures are used to determine the winner of an  
39 election determined by ranked-choice voting that is not an open primary election for the  
40 office of Governor, State Senator or State Representative. The ranked-choice voting count  
41 must proceed in rounds. In each round, the number of votes for each continuing candidate  
42 must be counted. Each continuing ballot counts as one vote for its highest-ranked

1 continuing candidate for that round. Exhausted ballots are not counted for any continuing  
2 candidate. The round then ends with one of the following 2 potential outcomes.

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

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

7 **Sec. 41. 21-A MRSA §723-A, sub-§2-A** is enacted to read:

8 **2-A. Procedures in open primary election.** Except as provided in subsections 3-A  
9 and 4, the following procedures are used to determine the top 2 candidates in an open  
10 primary election for the office of Governor, State Senator or State Representative  
11 determined by ranked-choice voting and the top 4 candidates in an open primary election  
12 for the office of United States Senator or United States Representative to Congress. The  
13 ranked-choice voting count must proceed in rounds. In each round, the number of votes  
14 for each continuing candidate must be counted. Each continuing ballot counts as one vote  
15 for its highest-ranked continuing candidate for that round. Exhausted ballots are not  
16 counted for any continuing candidate.

17 A. For determining the candidates for the office of Governor, State Senator or State  
18 Representative, the round then ends with one of the following 2 potential outcomes.

19 (1) If there are 3 or fewer continuing candidates, the 2 candidates with the most  
20 votes are declared the winners of the open primary election.

21 (2) If there are more than 3 continuing candidates, the last-place candidate is  
22 defeated and a new round begins.

23 B. For determining the candidates for the office of United States Senator or United  
24 States Representative to Congress, the round ends with one of the following 2 potential  
25 outcomes.

26 (1) If there are 5 or fewer continuing candidates, the 4 candidates with the most  
27 votes are declared the winners of the open primary election.

28 (2) If there are more than 5 continuing candidates, the last place candidate is  
29 defeated and a new round begins.

30 **Sec. 42. 21-A MRSA §723-A, sub-§3,** as amended by PL 2019, c. 320, §13, is  
31 further amended to read:

32 **3. Ties in election that is not open primary election.** A tie ~~under this section~~ between  
33 last-place candidates in an election determined by ranked-choice voting that is not an open  
34 primary election for the office of Governor, State Senator or State Representative in any  
35 round other than the final round must be decided by lot, and the candidate chosen by lot is  
36 defeated. The result of the tie resolution must be recorded and reused in the event of a  
37 recount. A tie between candidates for the most votes in the final round must be decided as  
38 provided in section 732.

39 **Sec. 43. 21-A MRSA §723-A, sub-§3-A** is enacted to read:

40 **3-A. Ties in open primary election.** A tie between the 2nd-place and 3rd-place  
41 candidates for the office of Governor, State Senator or State Representative in an open  
42 primary election in any round must be decided by lot, and the candidate chosen by lot is

1 defeated. The result of the tie resolution must be recorded and reused in the event of a  
2 recount. A tie between the top 2 candidates for the office of Governor, State Senator or  
3 State Representative in the final round of an open primary election need not be resolved.  
4 A tie between the 4th-place and 5th-place candidates for the office of United States Senator  
5 or United States Representative to Congress in an open primary election in any round must  
6 be decided by lot, and the candidate chosen by lot is defeated. The result of the tie  
7 resolution must be recorded and reused in the event of a recount. A tie between the top 4  
8 candidates for the office of United States Senator or United States Representative to  
9 Congress in the final round of an open primary election need not be resolved.

10 **Sec. 44. 21-A MRSA §723-A, sub-§5-B**, as amended by PL 2021, c. 750, §11 and  
11 affected by §14, is further amended to read:

12 **5-B. Presidential primary elections; selection of delegates.** Notwithstanding any  
13 provision of this section to the contrary, for presidential primary elections, batch  
14 elimination may not be used for any candidates with more than 100 votes, tabulation must  
15 continue until only 2 continuing candidates remain or until all remaining candidates meet  
16 or exceed a percentage threshold established by party rule, separate tabulations must be  
17 conducted statewide and for each congressional district and selection and allocation of  
18 delegates to a party's national presidential nominating convention must be in accordance  
19 with any reasonable procedures established at the state party convention, except that  
20 unenrolled voters who participate in the party's primary election must be considered  
21 members of the party for purposes of allocating delegates.

22 **Sec. 45. 21-A MRSA §732, sub-§1**, as corrected by RR 2019, c. 2, Pt. B, §58, is  
23 amended to read:

24 **1. Primary election.** In a primary election other than an open primary election for the  
25 office of Governor, State Senator or State Representative, the Secretary of State shall notify  
26 each person involved in the tie to be present at the Secretary of State's office at a certain  
27 time. At that time, the Secretary of State shall select the nominee publicly by lot.

28 **Sec. 46. 21-A MRSA §759, sub-§4**, as amended by PL 2007, c. 455, §43, is further  
29 amended to read:

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

39 **Sec. 47. 21-A MRSA §812, sub-§3**, as enacted by PL 1985, c. 161, §6, is amended  
40 to read:

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

43 **Sec. 48. 21-A MRSA §812, sub-§5**, as enacted by PL 1985, c. 161, §6, is amended  
44 to read:

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

4 **Sec. 49. 21-A MRSA §825, sub-§1,** as corrected by RR 2019, c. 2, Pt. B, §67, is  
5 amended to read:

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

10 **Sec. 50. 21-A MRSA §843, sub-§3,** as enacted by PL 1985, c. 161, §6, is amended  
11 to read:

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

14 **Sec. 51. 21-A MRSA §843, sub-§4,** as enacted by PL 1985, c. 161, §6, is amended  
15 to read:

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

19 **SUMMARY**

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

26 The votes in an open primary election must be tabulated using ranked-choice voting,  
27 except that, for the office of Governor, State Senator or State Representative, the 2  
28 candidates who receive the most votes are declared the winners of the open primary and,  
29 for the office of United States Senator or United States Representative to Congress, the 4  
30 candidates who receive the most votes are declared winners of the open primary. The  
31 names of the winners of an open primary must appear on the ballot for the general election.  
32 The winner of the general election for the office of United States Senator or United States  
33 Representative to Congress is determined by ranked-choice voting. If one of the candidates  
34 who received the most votes at the open primary dies or becomes disqualified before the  
35 general election, that candidate's name must remain on the ballot and the voters must be  
36 notified that a vote for that candidate will be counted and, if that candidate is declared the  
37 winner of the election, a vacancy will be declared at the beginning of the term of the office  
38 for which the candidate was elected. Voters may not vote for a write-in candidate in a  
39 general election that was preceded by an open primary election.

40 The bill also provides that, in a year in which there is a presidential election, an open  
41 primary must be held on the same day as the presidential primary.