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No. 1571

H.P. 1082

House of Representatives, May 2, 2017

An Act To Amend the Election Laws Relating to Party Qualification

(AFTER DEADLINE)

Submitted by the Secretary of State and approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative LUCHINI of Ellsworth.

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

2 **Sec. 1. 21-A MRSA §1, sub-§22**, as enacted by PL 1985, c. 161, §6, is amended
3 to read:

4 **22. Major party.** "Major party" means a political party ~~polling the greatest or the~~
5 ~~next greatest number of votes cast for Governor at the last gubernatorial~~ that has more
6 than 50,000 enrolled members as of the end of December following a general election.

7 **Sec. 2. 21-A MRSA §1, sub-§24**, as enacted by PL 1985, c. 161, §6, is amended
8 to read:

9 **24. Minor party.** "Minor party" means a political party ~~other than a major party that~~
10 has no fewer than 5,000 and no more than 50,000 enrolled members as of the end of
11 December following a general election.

12 **Sec. 3. 21-A MRSA §23, sub-§3-B**, as enacted by PL 2013, c. 131, §3, is
13 amended to read:

14 **3-B. Party formation documents.** The Secretary of State shall keep party
15 formation declarations of intent and certification forms filed pursuant to ~~section~~ sections
16 303 and 303-A in the office of the Secretary of State for 6 months after any appeal period
17 has passed.

18 **Sec. 4. 21-A MRSA §301**, as amended by PL 2011, c. 227, §1, is further amended
19 to read:

20 **§301. Qualified parties**

21 **1. Major party; primary election.** A major party qualifies to participate in a
22 primary election if its designation was listed on the ballot of either of the 2 preceding
23 general elections and if:

24 A. The party held municipal caucuses as prescribed by Article 2 in at least one
25 municipality in a minimum of 14 counties in the State during the election year in
26 which the designation was listed on the ballot and any interim election year and
27 fulfills this same requirement during the year of the primary election;

28 B. The party held a state convention as prescribed by Article ~~II~~ 3 during the election
29 year in which the designation was listed on the ballot and any interim election year;
30 and

31 E. At least 10,000 voters enrolled in the party voted in the last general election.

32 Each state party committee of a major party must file a statement with the Secretary of
33 State on or before March 20th certifying that the party has held the municipal caucuses
34 required by paragraph A. The statement must be signed by the party chair or the chair's
35 designated agent.

36 **2. General election.** A major party ~~which that~~ qualifies under subsection 1 to
37 participate in a primary election must, in that same year, hold a state convention as

1 prescribed by Article ~~III~~ 3 in order to have the party designation of its candidates printed
2 on the ballot in the general election of that year.

3 **3. Minor party.** A minor party qualifies to nominate candidates by state convention
4 and to have the party designation of its candidates printed on the ballot in the general
5 election of that year if its designation was listed on the ballot of either of the 2 preceding
6 general elections and if:

7 A. The minor party held municipal caucuses as prescribed by Article 2 in at least one
8 municipality in a minimum of 14 counties in the State during the election year in
9 which the designation was listed on the ballot and any interim election year and
10 fulfills this same requirement during the year of the general election;

11 B. The minor party held a state convention as prescribed by Article 3 during the
12 election year in which the designation was listed on the ballot and any interim
13 election year; and

14 C. At least 5,000 voters were enrolled in the minor party as of the end of December
15 following the most recent general election.

16 Each state party committee of a minor party must file a statement with the Secretary of
17 State on or before April 20th certifying that the party has held the municipal caucuses
18 required by paragraph A. The statement must be signed by the party chair or the chair's
19 designated agent.

20 **Sec. 5. 21-A MRSA §302**, as amended by PL 1999, c. 450, §§2 to 5, is further
21 amended to read:

22 **§302. Formation of new party; organization about a candidate**

23 A party whose designation was not listed on the general election ballot in the last
24 preceding general election qualifies to ~~participate in a primary election,~~ have the party
25 designation of its candidates on the ballot in the next general election if it meets the
26 requirements of subsections 1 and 2.

27 **1. Declaration of intent.** A voter or a group of voters not enrolled in a party
28 qualified under section 301 must file a declaration of intent to form a party with the
29 Secretary of State before 5 p.m. on the 180th day preceding the next primary election.
30 The declaration of intent must be on a form designed by the Secretary of State and must
31 include:

32 A. The designation of the proposed party;

33 B. The name of a candidate for Governor or for President in the last preceding
34 general election who was nominated by petition under subchapter ~~H~~ 2 and who
35 received 5% or more of the total vote cast in the State for Governor or for President
36 in that election;

37 C. The signed consent of that candidate; and

38 D. The name, address, telephone number, if published, and signature of the voter or
39 one of the group of voters who files the declaration of intent.

1 **2. Enrollment of voters.** After filing the declaration described in subsection 1, the
2 voter or voters proposing to form the party may then enroll voters in the proposed party
3 under sections 141 to 145.

4 **3. Municipal caucuses.** A party that has qualified under subsections 1 and 2 to
5 ~~participate in a primary election~~ have the party designation of its candidates on the ballot
6 in the next general election must conduct municipal caucuses in at least one municipality
7 in each of the 16 counties during that election year as prescribed in Article ~~II~~ 2. The chair
8 of the municipal committee or a resident voter in the municipality must file a copy of the
9 notice required by section 311, subsection 3 with the Secretary of State before 5 p.m. on
10 March 20th.

11 **4. Convention.** A party that has qualified under subsections 1 and 2 ~~to participate in~~
12 ~~a primary election~~ must in that same year conduct the municipal caucuses under
13 subsection 3 and hold a state convention as prescribed by Article ~~III~~ 3 in order to have the
14 party designation of its candidates printed on the ballot in the general election of that
15 year. The voter or group of voters who files the declaration of intent may perform the
16 duties of the state committee under section 321, subsection 1 for the party's initial
17 convention.

18 **Sec. 6. 21-A MRSA §303**, as amended by PL 2013, c. 131, §11, is further
19 amended to read:

20 **§303. Formation of new major party; organization by party enrollment**

21 In addition to the procedure under section 302, a major party whose designation was
22 not listed on the general election ballot in the last preceding general election qualifies to
23 participate in a primary election if it meets the requirements of subsections 1 and 2.

24 **1. Declaration of intent.** Ten or more voters who are not enrolled in a party
25 qualified under section 301 must file a declaration of intent to form a major party with the
26 Secretary of State between December 1st and December 30th of an even-numbered year.
27 The declaration of intent must be on a form designed by the Secretary of State and must
28 include:

- 29 A. The designation of the proposed major party; and
30 B. The names, addresses, telephone numbers, if published, and signatures of the
31 voters who file the declaration of intent.

32 **2. Enrollment of voters.** Within 5 business days after the declaration of intent
33 required in subsection 1 is filed, the Secretary of State shall certify whether the
34 application meets the requirements of subsection 1 and, if so, notify the applicants that
35 they may enroll voters in the proposed party under sections 141 to 145. On or before
36 December 1st of the odd-numbered year following the filing of the application under
37 subsection 1, the applicants must file a certification with the Secretary of State, on a form
38 designed by the Secretary of State, that they have at least 5,000 voters enrolled in the
39 proposed party. The Secretary of State shall verify the proposed party's enrollment
40 figures within ~~5~~ 15 business days of receiving the proposed party's certification and
41 notify the applicants whether the proposed party has met the requirements to participate

1 in a primary election in the subsequent even-numbered year. A determination by the
2 Secretary of State that the party has not met these requirements may be challenged
3 pursuant to section 303-B.

4 **4. Municipal caucuses.** A major party that has qualified under subsections 1 and 2
5 to participate in a primary election must conduct municipal caucuses in at least one
6 municipality in each of the 16 counties during that election year as prescribed in Article
7 2. The chair of the municipal committee or a resident voter in the municipality must file
8 a copy of the notice required by section 311, subsection 3 with the Secretary of State
9 before 5 p.m. on March 20th.

10 **5. Convention.** A major party that has qualified under subsections 1 and 2 to
11 participate in a primary election must in that same year conduct the municipal caucuses
12 under subsection 4 and hold a state convention as prescribed by Article 3; in order to have
13 the party designation of its candidates printed on the ballot in the general election of that
14 year. The voters who file the declaration of intent may perform the duties of the state
15 committee under section 321, subsection 1 for the party's initial convention.

16 **Sec. 7. 21-A MRSA §303-A** is enacted to read:

17 **§303-A. Formation of new minor party; organization by party enrollment**

18 In addition to the procedure under section 302, a minor party whose designation was
19 not listed on the general election ballot in the last preceding general election qualifies to
20 nominate candidates by state convention and to have the party designation of its
21 candidates printed on the ballot in the general election of that year if it meets the
22 requirements of subsections 1 and 2.

23 **1. Declaration of intent.** Ten or more voters who are not enrolled in a party
24 qualified under section 301 must file a declaration of intent to form a minor party with the
25 Secretary of State between December 1st and December 30th of an even-numbered year.
26 The declaration of intent must be on a form designed by the Secretary of State and must
27 include:

28 A. The designation of the proposed minor party; and

29 B. The names, addresses, telephone numbers, if published, and signatures of the
30 voters who file the declaration of intent.

31 **2. Enrollment of voters.** Within 5 business days after the declaration of intent
32 required in subsection 1 is filed, the Secretary of State shall certify whether the
33 application meets the requirements of subsection 1 and, if so, notify the applicants that
34 they may enroll voters in the proposed party under sections 141 to 145. On or before
35 March 1st of the next even-numbered year following the filing of the application under
36 subsection 1, the applicants must file a certification with the Secretary of State, on a form
37 designed by the Secretary of State, that they have at least 5,000 voters enrolled in the
38 proposed party. The Secretary of State shall verify the proposed party's enrollment figures
39 within 15 business days of receiving the proposed party's certification and notify the
40 applicants whether the proposed party has met the requirements to have the party
41 designation of its candidates for the general election printed on the ballot in that election

1 year. A determination by the Secretary of State that the party has not met these
2 requirements may be challenged pursuant to section 303-B.

3 **3. Municipal caucuses.** A minor party that has qualified under subsections 1 and 2
4 must conduct municipal caucuses in at least one municipality in each of the 16 counties
5 during that election year as prescribed in Article 2. The chair of the municipal committee
6 or a resident voter in the municipality must file a copy of the notice required by section
7 311, subsection 3 with the Secretary of State before 5 p.m. on April 20th.

8 **4. Convention.** A minor party that has qualified under subsections 1 and 2 must in
9 that same year conduct the municipal caucuses under subsection 3 and hold a state
10 convention as prescribed by Article 3 in order to have the party designation of its
11 candidates printed on the ballot in the general election of that year. The voters who file
12 the declaration of intent may perform the duties of the state committee under section 321,
13 subsection 1 for the party's initial convention.

14 **Sec. 8. 21-A MRSA §303-B** is enacted to read:

15 **§303-B. Challenge to denial of party qualification**

16 If the Secretary of State determines that a party has not met the requirements to
17 qualify as a major party pursuant to section 303 or a minor party pursuant to section
18 303-A, the proposed party may challenge that determination. The procedure for
19 challenging the determination is as follows.

20 **1. Challenge.** A challenge under this section must be in writing, signed by the
21 voters who signed the declaration of intent to form a party by enrollment, and must set
22 forth the reasons for the challenge. The challenge may include a request for copies of
23 voter registration and enrollment or change of enrollment applications that were rejected
24 by municipal registrars from up to 15 named municipalities. The challenge must be filed
25 in the office of the Secretary of State before 5 p.m. on the 5th business day after the party
26 receives the secretary's determination.

27 **2. Notification.** Within 5 business days of receiving a properly filed challenge under
28 subsection 1, the Secretary of State shall notify the municipalities listed by the challenger
29 and direct the municipal officials of those municipalities to submit copies of the rejected
30 voter registration and enrollment or change of enrollment applications if requested under
31 subsection 1 to the Secretary of State within 5 business days.

32 **3. Public hearing.** Within 15 business days after receipt of a properly filed
33 challenge under subsection 1, and after providing due notice of the hearing to the
34 challenger, the Secretary of State shall hold a public hearing on the challenge. The
35 hearing must be held in accordance with the Maine Administrative Procedure Act. The
36 challenger has the burden of providing sufficient evidence to establish that the party did
37 enroll a minimum of 5,000 voters by the applicable deadline pursuant to section 303 or
38 303-A.

39 **4. Ruling.** The Secretary of State shall rule on the validity of any challenge within 5
40 business days after the completion of the hearing described in subsection 3.

1 **5. Appeal of Secretary of State's determination.** A challenger may appeal the
2 determination of the Secretary of State under subsection 4 by commencing an action in
3 the Superior Court. This action must be conducted in accordance with the Maine Rules of
4 Civil Procedure, Rule 80C, except as modified by this section. This action must be
5 commenced within 5 business days of the date of the determination of the Secretary of
6 State. Upon timely application, a person may intervene in this action if the person claims
7 an interest relating to the subject matter of the petitions, unless the person's interest is
8 adequately represented by existing parties. The court shall issue a written decision
9 containing its findings of fact and conclusions of law and setting forth the reasons for its
10 decision within 20 days of the date of the determination of the Secretary of State.

11 **6. Appeal of Superior Court decision.** The challengers may appeal the decision of
12 the Superior Court under subsection 5, on questions of law, by filing a notice of appeal
13 within 3 days of that decision. The record on appeal must be transmitted to the Law Court
14 within 3 days after notice of appeal is filed. After filing notice of appeal, the parties have
15 4 days to file briefs and appendices with the clerk of courts. As soon as the record and
16 briefs have been filed, the court shall immediately consider the case. The court shall issue
17 its decision within 14 days of the date of the decision of the Superior Court.

18 **Sec. 9. 21-A MRSA §305**, as enacted by PL 1985, c. 161, §6, is amended to read:

19 **§305. Secretary of State**

20 The Secretary of State shall determine whether or not a party has met the
21 requirements of sections 301, 302 ~~and~~ 303 and 303-A.

22 **Sec. 10. 21-A MRSA §306**, as enacted by PL 1985, c. 161, §6, is amended to
23 read:

24 **§306. Enrolled voters**

25 A voter who is enrolled in a party ~~which~~ that failed to meet the requirements of
26 section 302 ~~or~~ 303 or 303-A, or ~~which~~ that is disqualified under section 304, is
27 considered an unenrolled voter for all purposes.

28 **Sec. 11. 21-A MRSA §307, first ¶**, as enacted by PL 1985, c. 161, §6, is
29 amended to read:

30 A voter or group of voters seeking to participate as a major party in a primary
31 election under section 302 or 303 or as a minor party in a general election under section
32 302 or 303-A must choose a party designation that does not:

33 **Sec. 12. 21-A MRSA §321, sub-§1**, as amended by PL 2005, c. 387, §4, is
34 further amended to read:

35 **1. Time, place and representation.** The party's state committee shall determine the
36 time, place and basis of representation for the convention. ~~Delegates~~ For a major party,
37 delegates must be qualified to vote in the party's primary election unless otherwise
38 permitted by party rules. For a minor party, delegates must be enrolled in the minor party
39 and qualified to vote at the convention pursuant to chapter 3, subchapter 3, Article 2.

1 **Sec. 13. 21-A MRSA §322, sub-§2**, as amended by PL 2005, c. 568, §11, is
2 further amended to read:

3 **2. State committee to report organization.** The chair and the secretary of the state
4 committee shall certify to the Secretary of State the names of the party's candidates for
5 presidential elector within 30 days after the convention. A minor party shall submit the
6 names and completed consent forms under section 323, subsection 3 of its candidates for
7 federal, state or county office who are nominated at the minor party's state convention
8 within 30 days after the convention or by 5 p.m. on August 8th of the election year,
9 whichever first occurs. The chair or the secretary of the state committee shall provide
10 upon request by the Secretary of State the name, residence and contact information of the
11 chair and secretary of any committee and of any committee member.

12 **Sec. 14. 21-A MRSA §323** is enacted to read:

13 **§323. Nomination by convention for minor party candidates**

14 A minor party's nomination of a candidate must be made by state convention as
15 provided in this section.

16 **1. Eligibility.** To be eligible for nomination, a person must be enrolled in the minor
17 party as of the date of the convention and meet any other requirements that may be
18 established by party rules.

19 **2. Limitations to candidacy.** A person may not be nominated as a candidate for
20 more than one federal, state or county office at any election, except for a candidate for
21 membership in a county charter commission or a candidate for presidential elector under
22 section 351, subsection 3.

23 **3. Consent forms.** A candidate nominated by convention must submit a signed
24 written statement on a form provided by the Secretary of State that the candidate will
25 accept the nomination of the minor party for the office specified. The form must include a
26 list of the statutory and constitutional requirements of that office. The form must contain
27 a declaration of the candidate's place of residence and party enrollment, which must be
28 certified by the registrar in the candidate's municipality. The form also must contain a
29 statement that the candidate meets the qualifications of the office for which the candidate
30 is being nominated. The candidate must verify these statements by oath or affirmation
31 before a notary public or other person authorized by law to administer oaths or
32 affirmations that the declarations are true. The party shall submit signed consent forms
33 for its nominees to the Secretary of State pursuant to section 322, subsection 2.

34 **Sec. 15. 21-A MRSA §331, sub-§1**, as amended by PL 2015, c. 447, §8, is
35 further amended to read:

36 **1. Nomination by primary election.** A major party's nomination of a candidate
37 must be made by primary election, as provided in this Article. When there is an office for
38 which no candidate has qualified either by filing a petition and consent under sections
39 335 and 336 or as a write-in candidate in accordance with section 722-A, the Secretary of
40 State is not required to list the office on the primary ballot. The Secretary of State is not

1 required to print a primary ballot if there are no offices for which a candidate has
2 qualified.

3 **Sec. 16. 21-A MRSA §331, sub-§2**, as enacted by PL 1985, c. 161, §6, is
4 amended to read:

5 **2. Exceptions.** This Article does not apply to:

6 A. Nominations for presidential electors; and

7 B. Nominations to fill vacancies under subchapter ~~III~~; and 3.

8 ~~C. Nominations by petition under subchapter II.~~

9 **SUMMARY**

10 This bill creates a new category of political party, defined as a "minor party," with a
11 minimum of 5,000 and a maximum of 50,000 enrolled voters. A party with more than
12 50,000 enrolled voters is defined as a "major party" and nominates candidates through the
13 primary election process. Minor parties do not participate in primaries but instead
14 nominate candidates at state conventions and are required to file consent forms and
15 statements of qualification for those candidates with the Secretary of State within 30 days
16 of the convention or by August 8th of the election year, whichever first occurs. The bill
17 modifies the timeline and procedure for major and minor parties to qualify and to retain
18 qualified party status. It includes an administrative process, similar to the existing one for
19 candidate petition challenges, by which a party may challenge a determination by the
20 Secretary of State that it has failed to qualify. These changes to the party qualification
21 process are intended to address legal issues raised by the Libertarian Party of Maine in a
22 lawsuit filed in 2016, *Libertarian Party of Maine v. Dunlap*, Docket No. 2:16-cv-00002-
23 JAW, and addressed by the United States District Court in a preliminary injunction order
24 issued on May 27, 2016.