

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

H.P. 1078 - L.D. 1476

An Act To Clarify Recounts in Municipal Elections

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

Sec. 1. 30-A MRSA §2531-B, as amended by PL 2017, c. 191, §1, is repealed and the following enacted in its place: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

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

- A. Two and one-half percent, if the combined vote for the candidates is 1,000 or less;
- B. Two percent, if the combined vote for the candidates is 1,001 to 5,000; or
- C. One and one-half percent, if the combined vote for the candidates is 5,001 or over.

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

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

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

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

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

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

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

D. If any ballots are disputed as to voter intent, the candidates may resolve the dispute by consensus in accordance with rules for determining voter intent adopted

by the Secretary of State pursuant to Title 21-A, section 696, subsection 6. If consensus cannot be reached, those disputed ballots must be set aside. If the number of disputed ballots potentially affects the outcome of the recount, the municipal clerk shall forward the disputed ballots to the clerk of the nearest Superior Court in the county in which the election was held.

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

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

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

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

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

§2532. Referendum recount procedure

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