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JOINT STANDING COMMITTEE ON VETERANS AND LEGAL AFFAIRS

**LD 1083 “An Act To Implement Ranked-choice Voting for Presidential
Primary and General Elections in Maine”**

Testimony Provided by Julie L. Flynn, Deputy Secretary of State, March 20, 2019

Senator Luchini, Representative Schneck and Members of the Committee:

The Secretary of State is neither for nor against this legislation which would implement a Presidential Primary conducted by Ranked-choice voting. Although we are in favor of re-instating the Presidential Primary in Maine, there are several parts of the bill that we think should be revised in order to provide for an efficient election process.

Ranked-choice Voting for Presidential Primary (Section 1 of the Proposed Law)

Using RCV for the presidential primary is problematic for both a policy reason and a practical reason. The Presidential Primary winner of each party is not nominated to the general election ballot -- the nominees are determined by the national nominating conventions -- so the primary is essentially a method of expressing a preference for the winning candidate. Additionally, if party rules provide for proportional allocation of delegates to the national convention, it seems more straightforward to do that based on the first-choice votes; additional rounds of counting to narrow the field to the top two candidates and declare the highest vote getter as the winner seems unnecessary.

In practical terms, depending on the date set for the primary, the conduct of the RCV central count would directly conflict with the state primary candidate filing period and any subsequent challenges. Nearly all of the statewide candidate filings and almost two-thirds of the state and county candidate filings are submitted in the week prior to the March 15th deadline. It would be extremely difficult for us to manage both the RCV count and the state primary candidate filing process during the same time frame.

Determination and date of Primary (Section 441 of Proposed Law)

As drafted, the bill states that the election must be held in March of the presidential year on a date chosen by the Secretary of State after consultation with the parties. Having a date certain in the law provides more predictability in the process -- for the parties, candidates and voters alike -- and establishing either the **first Tuesday or the first Tuesday after the first Monday in March** as the election date would provide about a week between the election and the primary petition filing deadline.

Party Certification (Section 442 of Proposed Law)

This section of law states that the state committee of a party shall file the certification that there is a contest among candidates for nomination by December 1st of the year prior to the presidential election year. Therefore, under the prior section, the date of the election would not be set until after the December 1st certification of the parties. Again, we strongly recommend having a date certain for the election provided in the statute.

Petitions (Section 443 of Proposed Law)

Although the petitions would have to be made available by July 1st of the year prior to the presidential election year, the filing deadline for petitions is proposed to be 45 days before the election, which is a problem for 2 reasons. The first reason is that when you do not have a date certain for the election - then you don't have a date certain for the filing deadline. The second reason is that ballots have to be issued to UOCAVA voters 46 days before the election. The filing deadline needs to be 60 or more days before the election to allow for production and issuance of UOCAVA ballots by the federal deadline. Because this bill does not have an emergency preamble and won't take effect until sometime in September or October (depending on adjournment) we would be required to provide candidate petitions well before the law takes effect.

Ballot Preparation and Candidate Eligibility (Section 444 of Proposed Law)

This section of the proposed law gives the Secretary of State the sole discretion to select the candidates who will appear on the ballot. This provision is presumably intended to prevent dilution of the delegate apportionment by keeping people who have no chance of winning a national nomination from being on the ballot. However, leaving a determination of who is "generally advocated for or recognized as a presidential candidate of nationwide stature in the national news media throughout the United States" to the Secretary of State in his sole discretion seems problematic and almost certain to generate legal challenges. Since this bill only allows ballot access by petition (rather than by filing fee like the prior preference primary law did), it seems unlikely that non-viable candidates would qualify for the ballot.

Another issue is that the Secretary of State has to make this determination as to which candidates qualify at least 30 days prior to preparation of ballots. This is in conflict with the candidate filing deadline, which is 45 days before the election.

The final issue in this section is that the deadline for a candidate to withdraw from the ballot is 45 days before the election. The withdrawal date needs to be at least 60 days before the election, so ballots can be prepared and issued to UOCAVA voters at least 46 days before the election. Again, this change needs to be made in tandem with setting a date certain for the election.

Cost (Section 446 of Proposed Law)

This section provides that "*whenever a municipality complies* with the provisions of this subchapter, the State shall bear the cost incurred." (emphasis added) This could be read that municipalities don't have to comply (or participate) in the election, but when they do, the state will pay the costs. If it is the intent of the sponsors to have all municipalities participate in the primary, then this wording should be clarified.

Currently, for statewide elections, the State pays the costs of producing and distributing to each municipality the ballots, forms, instructions and other materials necessary for the conduct of the election; while the municipalities pay for the costs associated with the mailing of absentee ballots (i.e. first-class postage), municipal staff costs to prepare for the election, costs of securing and setting up the voting places and usage on election day, and the costs for the election officials needed to conduct the election on election day. Under this provision of the bill, the State would pay the municipal costs for conducting the election.

Since the municipal costs are under the control of the municipality (i.e. what they pay their staff and election officials, etc.) and are not generally known to the state, a true picture of the municipal cost to conduct the election would be difficult to know in advance, and municipalities may try to include costs unrelated to the election in their tally, unless the components are known and agreed to prior to the election. This bill does not currently provide the specific municipality costs that will be reimbursed or how they will be determined to be reimbursable. If each of 500 municipalities submits an invoice and our office must review, approve and reimburse these costs, this will require significant additional effort and state expense to complete. In the Secretary of State's *Report Regarding Establishing a Presidential Primary System in Maine* submitted to the 128th Legislature on December 1, 2017, we estimated the cost to municipalities at over \$857,000 based on a survey of all municipalities.

Presidential primary ballot (Section 601-B of the Proposed Law)

Over the past decade, we have made several changes to ballot design to meet accessibility and readability recommendations and to decrease the cost of ballot printing. The ballot layout and design features for all ballots are currently in one section of the election law, section 601. Therefore, nearly all of this proposed section is redundant or reflects outdated practices for ballot design and should be eliminated. Only paragraphs E and F (lines 1 – 6 on page 4 of the bill) should be retained and added in to current section 601 of the law, with additional language to reference that these requirements pertain only to the presidential primary ballot.

I will be happy to answer any questions you may have, either now or at the work session.