

Dear Judiciary Committee members –

March 9, 2022

Part of your jurisdiction is to review proposed legislation to which Joint Rule 318 applies.

Joint Rule 318. Review of judicial proceeding priorities.

Whenever a legislative measure is proposed that contains a provision to expedite, establish or adjust the priority of judicial proceedings, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public meeting on the proposal and determine the level of support for the proposal among members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the joint standing committee of the Legislature having jurisdiction over judiciary matters to review and evaluate the proposal as it pertains to the appropriate priority and timing of judicial proceedings in all state courts. Information may be requested from the Judicial Branch. The joint standing committee of the Legislature having jurisdiction over judiciary matters shall conduct the review and report back to the committee of jurisdiction.

The Veterans and Legal Affairs Committee has voted on LD 1830, An Act to Amend the Election Laws, and the majority report proposes an appeal from the Secretary of State's decision to be heard and decided within short timelines in order to ensure that ballots can be printed far enough before an election. The attached memo lays out the details.

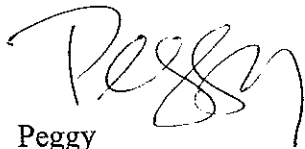
Joint Rule 318 requires you, the Judiciary Committee, to review the proposal and determine whether the provision is appropriate or if it imposes unnecessary burdens on the courts, and to ensure that it provides for a priority of court activity that is consistent with public policy.

Attached is the Review Process that the Judiciary Committee has used in the past in conducting a review under Joint Rule 318.

Thursday at 1:00 p.m., The Veterans and Legal Affairs Committee will present the memo and be available for questions, as will representatives of the Secretary of State's Office and the Judicial Branch.

Please let me know if you have any questions!

Thanks



Peggy

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Review process for proposals contain a provision to expedite, establish or adjust the priority of judicial proceedings

Proposing Committee of Jurisdiction should be prepared to answer the following questions:

1. What does the bill or amendment propose?
2. What is the problem the bill is trying to address?
3. Are there similar situations that are currently treated with the same priority? Are there similar situations that are treated differently?
4. Why is the standard docketing and scheduling not appropriate in this situation?
5. Does the proposed prioritization resolve the problem?
 - A. Would less restrictive provisions still meet the needs?
 - B. Can the court be given flexibility to address the needs as appropriate in each situation? Example: "The hearing may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require."

Judiciary Committee considerations:

1. Does Constitution or a federal law require priority?
If so, appropriate to assign high priority?
2. Has a full hearing already been provided?
If so, immediate needs may be met; review need for timely action and whether that must be directed in statute
3. Does the proposed statute affect any of the following:
 - A. Mental health laws affecting personal liberty and medical emergencies?
 - Personal liberty, constitutional issues: Higher priority
 - Corrections detentions (including pretrial and juvenile)
 - Mental health
 - B. Public health emergencies?
 - Public safety issues: Higher priority
 - C. Elections?
 - Timeliness: Higher priority

- D. Interstate uniform laws?
 - Review need for consistency and uniformity
- E. Domestic violence (protection from abuse)?
 - Personal safety: Higher priority
- F. Medical necessity?
 - May depend on the severity of the medical necessity and scope of application (e.g., individuals versus community)
- G. Family matters relating to child custody?
 - State's interest in resolving issues concerning children
- H. Evictions?
 - Need to address needs of tenants and landlords in timely manner
- I. Government functioning and enforcement of statutes?
 - May vary with the nature of the function and the need for enforcement; may include the need to maintain integrity of the law
- J. Actions taken on an ex parte basis?
 - These actions typically are created to address emergency situations by definition necessitating immediate court involvement: High priority for first step, then full hearing on both sides of controversy

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STATE OF MAINE
ONE HUNDRED AND THIRTIETH LEGISLATURE
COMMITTEE ON VETERANS AND LEGAL AFFAIRS

MEMORANDUM

TO: Senator Anne Carney, Senate Chair
Representative Thom Harnett, House Chair
Joint Standing Committee on Judiciary

FROM: Senator Craig V. Hickman, Senate Chair *CH*
Representative Christopher J. Caiazzo, House Chair *CC*
Joint Standing Committee on Veterans and Legal Affairs

DATE: February 28, 2022

SUBJECT: Joint Rule 318 Review of LD 1830, *An Act To Amend the Election Laws*

Thank you for your consideration and review in accordance with Joint Rule 318 of section 7 of the majority committee amendment to LD 1830, *An Act To Protect Public Election Officials*. We understand your review under the joint rule will evaluate this provision "as it pertains to the appropriate priority and timing of judicial proceedings in all state courts."

LD 1830 was submitted by the Secretary of State to address several different aspects of the State's election laws. Relevant to your review under Joint Rule 318, section 7 of the bill would have amended 21-A M.R.S. §905. Subsection 1 of this statute directs the Secretary of State to determine the validity of a petition for a people's veto referendum or a direct initiative within 30 days of the date that the petition, which contains all of the signatures that have been gathered, is filed with the Secretary of State under the provisions of the Constitution of Maine, Article IV, Part Third, Section 17 or Section 18. Subsection 2 of this statute currently provides that an appeal of the Secretary of State's decision on the petition's validity may be brought within 10 days by (a) a voter who submitted the original application for the direct initiative or any voter who signed the petition, if the Secretary of State deems the petition invalid, or (b) by any other voter, if the Secretary of State deems the petition to be valid. Current subsection 2 further directs the Superior Court to issue its written decision on the appeal "within 40 days of the date of the decision of the Secretary of State." A subsequent appeal to the Supreme Judicial Court must be decided within 30 days of the Superior Court's decision under subsection 3 of the current statute.

Section 7 of LD 1830 would have amended §905(2) to require the Superior Court to issue its decision on an appeal before either the 40th day after the Secretary of State's decision or the 90th day before the date of the election in which the people's veto referendum or direct initiative will appear on the ballot, whichever is earlier. At the public hearing, we learned that the Secretary of State's proposal was

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intended to ensure that a final court decision on the validity of a people's veto referendum or citizen's initiative petition be available in time for the Secretary of State's office to prepare the ballots for printing. It is crucial that ballots be printed in time for absentee ballots to be transmitted to uniformed services voters or overseas voters no later than 45 days before the election, as required by the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §20302(a)(8)(A).

During the work session on LD 1830, we learned that it is possible that an appeal from a decision of the Secretary of State on the validity of a petition for a people's veto referendum or a directive initiative might be filed with the Superior Court less than 90 days before the election, rendering it impossible for the Superior Court to comply with section 7 of LD 1830 as it was originally drafted. This could occur, for example, in the following scenario:

- The Second Regular Session's statutory adjournment date, the 3rd Wednesday in April, could occur as late as **April 21st**
- Under the Constitution of Maine, Article IV, Part Third, Section 17(1), a group of citizens who wishes to pursue a people's veto petition must file that petition with all of the requisite signatures with the Secretary of State "on or before the 90th day after the recess of the Legislature," or by **July 20th**.

Note: Under the Constitution of Maine, Article IV, Part Third, Section 17(3), the Governor must by public proclamation direct that the people's veto referendum will be on the ballot at the next statewide election (unless the petition is later determined to be invalid)—*e.g.*, on **Nov. 2nd**.

- The Secretary of State might issue a decision on the validity of the petition on **Aug. 9th**
- Under 21-A M.R.S. §905(2), an aggrieved person has 10 days—or until **Aug. 19th**—to file an appeal with the Superior Court. This date is only 73 days before the Nov. 2nd election.

A majority of the Committee (9 members) voted to amend LD 1830 to, among other things, provide a process for the Superior Court to expedite appeals from decisions by the Secretary of State on the validity of a petition for a people's veto referendum or a citizen's initiative, when necessary, to ensure that a decision is rendered with sufficient time for the Secretary of State's office to arrange for the printing of the ballots and transmittal of the ballots to uniformed and overseas voters at least 45 days before the election as required by federal law. After consultation with the Secretary of State's Office and counsel in the Office of the Attorney General, we propose to amend section 7 of the bill as follows:

Strike and replace section 7 of the bill with the following:

Sec. 7. 21-A MRSA §905 is amended to read:

1. Secretary of State. The Secretary of State shall review all petitions filed in the Department of the Secretary of State for a people's veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17, or for a direct initiative under the Constitution of Maine, Article IV, Part Third, Section 18.

The Secretary of State shall determine the validity of the petition and issue a written decision stating the reasons for the decision within 30 days from the date of filing of a written petition in the Department of the Secretary of State under the Constitution of Maine, Article IV, Part Third, Section 17 or 18.

The Secretary of State may invalidate a petition if the Secretary of State is unable to verify the notarization of that petition.

2. **Superior Court.** Any voter named in the application under section 901, or any person who has validly signed the petitions, if these petitions are determined to be invalid, or any other voter, if these petitions are determined to be valid, may appeal the decision of the Secretary of State by commencing an action in the Superior Court. This action must be conducted in accordance with the Maine Rules of Civil Procedure, Rule 80C, except as modified by this section. In reviewing the decision of the Secretary of State, the court shall determine whether the description of the subject matter is understandable to a reasonable voter reading the question for the first time and will not mislead a reasonable voter who understands the proposed legislation into voting contrary to that voter's wishes. Except as provided in subsection 4, this action must be commenced within 10 days of the date of the decision of the Secretary of State. Upon timely application, anyone may intervene in this action when the applicant claims an interest relating to the subject matter of the petitions, unless the applicant's interest is adequately represented by existing parties. The court shall advance the action on the docket and give it priority over other cases where the court determines the interests of justice so require, and shall issue its written decision containing its findings of fact and stating the reasons for its decision within 40 days of the date of before the 40th day after the decision of the Secretary of State.

3. **Supreme Judicial Court.** Any aggrieved party may appeal the decision of the Superior Court, on questions of law, by filing a notice of appeal within 3 days of that decision. The appellant must file the required number of copies of the record with the clerk within 3 days after filing notice of appeal. After a notice of appeal is filed, the parties have 10 days to file briefs with the clerk of courts. As soon as the record and briefs have been filed, the court shall immediately consider the case. The standard of review shall be the same as for the Superior Court. The Except as provided in subsection 4, the court shall issue its decision within 30 days of the date of the decision of the Superior Court.

4. **Expedited Proceedings.** If the Secretary of State's written decision on the validity of a petition under subsection 1 is issued within 120 days of the general or statewide election in which the people's veto referendum or direct initiative, if finally determined to be valid, will appear on the ballot, then the following modifications to the procedures established in subsections 2 and 3 apply:

A. An appeal under subsection 2 must be commenced within 5 days of the date that the Secretary of State's written decision was issued under subsection 1, unless the Secretary of State fails to provide notice of the 5-day deadline in the written decision;

B. The Superior Court shall conduct the appeal in accordance with subsection 2, except that the court shall issue its written decision containing its findings of fact and stating the reasons for its decision no later than 60 days prior to the general or statewide election in which the people's veto referendum or directive initiative, if finally determined to be valid, will appear on the ballot. In establishing the timeline for the proceedings and in issuing its written decision, the Superior Court shall give due regard to the deadline for completion of a further appeal under paragraph C; and

C. If an aggrieved party files an appeal with the Supreme Judicial Court under subsection 3, the court shall issue its decision no later than 50 days prior to the general or statewide election in which the people's veto referendum or direct initiative, if finally determined to be valid, will appear on the ballot.

Please find the bill and a copy of the current law attached. We look forward to meeting with you.



130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1830

S.P. 647

In Senate, December 22, 2021

An Act To Amend the Election Laws

Submitted by the Secretary of State pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 20, 2021. Referred to the Committee on Veterans and Legal Affairs pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read "Darek M. Grant".

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LUCHINI of Hancock.

Cosponsored by Senator: HICKMAN of Kennebec, Representatives: COREY of Windham, McCREIGHT of Harpswell, RIELLY of Westbrook, SUPICA of Bangor, WOOD of Portland.

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

2 Sec. 1. 21-A MRSA §112-A, sub-§1, as enacted by PL 2009, c. 253, §11, is
3 amended to read:

4 1. **Government-issued photograph identification document or credential.** A
5 government-issued photograph identification document or credential, including, but not
6 limited to, a current and valid United States passport, military identification, driver's license
7 or state identification or identification card issued by a federally recognized Indian tribe;

8 Sec. 2. 21-A MRSA §381, sub-§1, as amended by PL 1997, c. 436, §56, is further
9 amended to read:

10 1. **Nominees chosen.** The Governor shall order the appropriate political committees
11 to meet and shall set the deadline for choosing nominees. The deadline may not be sooner
12 than the 15th day after the date of the Governor's proclamation declaring a vacancy. The
13 political committees shall follow the procedure outlined in section 363.

14 Sec. 3. 21-A MRSA §382, sub-§1, as amended by PL 2011, c. 409, §2, is further
15 amended to read:

16 1. **Nominees chosen.** The Governor shall order the appropriate political committees
17 to meet and shall set the deadline for choosing nominees, ~~which may not be less than 15~~
18 ~~days following the.~~ The deadline may not be sooner than the 15th day after the date of the
19 Governor's proclamation declaring a vacancy. The political committees shall follow the
20 procedure outlined in section 363.

21 Sec. 4. 21-A MRSA §753-B, sub-§5, as repealed and replaced by PL 2019, c. 371,
22 §35, is repealed and the following enacted in its place:

23 5. Alternate method of balloting by residents of certain licensed facilities.
24 Residents of certain nursing homes, residential care facilities and assisted living programs
25 may cast absentee ballots under the provisions of this subsection. This subsection applies
26 to a licensed nursing home subject to the provisions of Title 22, chapter 405; a licensed
27 level IV residential care facility subject to the provisions of Title 22, chapter 1664; and a
28 licensed assisted living program with more than 6 beds subject to the provisions of Title
29 22, chapter 1664.

30 A. The municipal clerk shall designate one time during the 30-day period prior to an
31 election during which the municipal clerk shall be present in each facility to which this
32 subsection applies in the municipality for the purpose of conducting absentee voting
33 by residents of these facilities. The clerk shall designate which areas in these facilities
34 constitute the voting place, the voting booth and the guardrail enclosure. The clerk shall
35 post a notice in the municipal office that absentee voting will be conducted as
36 prescribed in this subsection. The clerk shall provide a notice to each facility of the
37 date and time when absentee voting will be conducted. The notice must state that the
38 facility is required to notify the contact person or persons, if any, for each resident that
39 absentee voting will be conducted. Each facility must provide notice, which may be in
40 the form of an e-mail or an electronic newsletter, to the contact person or persons, if
41 any, for each resident of the date and time when absentee voting will be conducted at
42 the facility. Sections 681 and 682 apply to voting in these facilities within the areas
43 designated by the clerk. As used in this subsection, "level IV residential care facility"

5

1 means a residential care facility as defined by Title 22, section 7852, subsection 14 that
2 has a licensed capacity of more than 6 residents.

3 B. To protect public health, the Secretary of State may designate procedures for
4 conducting absentee balloting in a facility to which this subsection applies that differ
5 from the procedures described in paragraph A if:

6 (1) The Department of Health and Human Services declares a health emergency
7 under Title 22, section 802, subsection 2;

8 (2) The Governor declares an extreme public health emergency under Title 22,
9 section 802, subsection 2-A; or

10 (3) The Department of Health and Human Services determines that a public health
11 threat, as defined in Title 22, section 801, subsection 10, threatens the health,
12 welfare or safety of the residents of a facility described in paragraph A.

13 Procedures designated under this paragraph remain in effect for the duration of the
14 health emergency, extreme public health emergency or public health threat, as the case
15 may be.

16 **Sec. 5. 21-A MRSA §901-A, sub-§2,** as amended by PL 2009, c. 611, §1, is further
17 amended to read:

18 **2. Required statements; placement of information.** On each page of a petition that
19 contains space intended for voter signatures, the Secretary of State shall include a space at
20 the top right or left corner of each such page to be submitted to the voters, which must be
21 filled in with the name of the circulator collecting signatures on that petition and a unique
22 identifying number, ~~and~~. On the first page of a petition only, the Secretary of State shall
23 include the fiscal impact of the initiative as described in Title 1, section 353 directly below
24 the following statement at the top of the petition in a type size of no less than 16 points:

25 "Freedom of Citizen Information: Before a registered voter signs any initiative petition,
26 signature gatherers must offer the voter the opportunity to read the proposed initiative
27 summary and fiscal impact statement prepared by the Secretary of State."

28 **Sec. 6. 21-A MRSA §903,** as enacted by PL 1985, c. 161, §6, is amended to read:
29 **§903. Instructions to be printed on**

30 The Secretary of State shall prepare ~~complete~~ instructions to inform the clerk and the
31 signer or circulator of a petition of the statutory and constitutional requirements. The
32 instructions must specify the conditions ~~which~~ that have been held to invalidate either
33 individual signatures or complete petitions. The instructions must be printed ~~in bold type~~
34 ~~or capital letters~~ on the petition.

35 **Sec. 7. 21-A MRSA §905, sub-§2,** as amended by PL 2009, c. 611, §6, is further
36 amended to read:

37 **2. Superior Court.** Any voter named in the application under section 901, or any
38 person who has validly signed the petitions, if these petitions are determined to be invalid,
39 or any other voter, if these petitions are determined to be valid, may appeal the decision of
40 the Secretary of State by commencing an action in the Superior Court. This action must be
41 conducted in accordance with the Maine Rules of Civil Procedure, Rule 80C, except as
42 modified by this section. In reviewing the decision of the Secretary of State, the court shall

1 determine whether the description of the subject matter is understandable to a reasonable
2 voter reading the question for the first time and will not mislead a reasonable voter who
3 understands the proposed legislation into voting contrary to that voter's wishes. This action
4 must be commenced within 10 days of the date of the decision of the Secretary of State.
5 Upon timely application, anyone may intervene in this action when the applicant claims an
6 interest relating to the subject matter of the petitions, unless the applicant's interest is
7 adequately represented by existing parties. The court shall issue its written decision
8 containing its findings of fact and stating the reasons for its decision ~~within 40 days of~~
9 before the 40th day after the date of the decision of the Secretary of State or the 90th day
10 before the date of the election in which the initiative or referendum will appear on the
11 ballot, whichever occurs first.

12 **Sec. 8. 21-A MRSA §905-A, first ¶,** as enacted by PL 2007, c. 234, §6, is amended
13 to read:

14 No later than ~~40~~ 15 business days after the Legislature adjourns sine die Secretary of
15 State issues a written decision under section 905, subsection 1 finding a petition for a direct
16 initiative to be valid, the Secretary of State shall give public notice of a proposed ballot
17 question for ~~any that~~ that initiative ~~that will be submitted to the voters at the next statewide~~
18 ~~election or special election~~ by posting all proposed ballot questions the question on the
19 Secretary of State's publicly accessible website. The Secretary of State may also publish
20 notice for one day in newspapers having general circulation in the State. After giving
21 public notice of ~~a~~ the proposed ballot question in accordance with this section, the Secretary
22 of State shall provide a 30-day public comment period for the purpose of receiving
23 comments on the content and form of the proposed questions ~~to be placed on the ballot for~~
24 ~~any pending initiatives~~ question. No later than 10 days after receiving public comments in
25 accordance with this section and after review of those comments, the Secretary of State
26 shall write the ballot question for ~~any pending~~ the initiative. An aggrieved voter may appeal
27 the final decision of the Secretary of State under this section using the procedures for court
28 review provided for in section 905, subsections 2 and 3.

29 SUMMARY

30 This bill makes the following changes to the laws governing elections.

31 1. It adds identification cards issued by federally recognized Indian tribes as acceptable
32 proof of identity of an applicant who is registering to vote.

33 2. It requires a minimum of 15 days for a political committee to caucus and nominate
34 a candidate for a vacancy in the office of State Senator or Representative to the Legislature.

35 3. It permits the Secretary of State to designate procedures that deviate from statutory
36 requirements for absentee balloting in certain nursing homes, residential care facilities and
37 assisted living programs as may be necessary to protect public health during a declared
38 health emergency, a declared extreme public health emergency or a public health threat
39 affecting residents in those facilities.

40 4. It clarifies that the fiscal impact statement for an initiative petition must be printed
41 only on the first page of the petition.

42 5. It removes the requirement that the instructions on a petition be printed in bold type
43 or capital letters.

1 6. It changes the timing of when the Secretary of State must draft a proposed ballot
2 question for a direct initiative to 15 business days after the determination that an initiative
3 petition is valid.

4 7. It requires aggrieved voters seeking to bring a legal challenge to the form or content
5 of a ballot question to follow the procedures applicable to challenges to the Secretary of
6 State's determination of the validity of direct initiative and people's veto petitions and
7 adjusts those procedures to require the Superior Court to issue a written decision before 40
8 days after the Secretary of State's decision or 90 days before the election in which the
9 initiative or referendum will appear on the ballot, whichever occurs first.

§905. Review of initiative and referendum petitions

1. Secretary of State. The Secretary of State shall review all petitions filed in the Department of the Secretary of State for a people's veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17, or for a direct initiative under the Constitution of Maine, Article IV, Part Third, Section 18.

The Secretary of State shall determine the validity of the petition and issue a written decision stating the reasons for the decision within 30 days from the date of filing of a written petition in the Department of the Secretary of State under the Constitution of Maine, Article IV, Part Third, Section 17 or 18.

The Secretary of State may invalidate a petition if the Secretary of State is unable to verify the notarization of that petition.

[PL 2017, c. 277, §6 (AMD).]

2. Superior Court. Any voter named in the application under section 901, or any person who has validly signed the petitions, if these petitions are determined to be invalid, or any other voter, if these petitions are determined to be valid, may appeal the decision of the Secretary of State by commencing an action in the Superior Court. This action must be conducted in accordance with the Maine Rules of Civil Procedure, Rule 80C, except as modified by this section. In reviewing the decision of the Secretary of State, the court shall determine whether the description of the subject matter is understandable to a reasonable voter reading the question for the first time and will not mislead a reasonable voter who understands the proposed legislation into voting contrary to that voter's wishes. This action must be commenced within 10 days of the date of the decision of the Secretary of State. Upon timely application, anyone may intervene in this action when the applicant claims an interest relating to the subject matter of the petitions, unless the applicant's interest is adequately represented by existing parties. The court shall issue its written decision containing its findings of fact and stating the reasons for its decision within 40 days of the date of the decision of the Secretary of State.

[PL 2009, c. 611, §6 (AMD).]

3. Supreme Judicial Court. Any aggrieved party may appeal the decision of the Superior Court, on questions of law, by filing a notice of appeal within 3 days of that decision. The appellant must file the required number of copies of the record with the clerk within 3 days after filing notice of appeal. After a notice of appeal is filed, the parties have 10 days to file briefs with the clerk of courts. As soon as the record and briefs have been filed, the court shall immediately consider the case. The standard of review shall be the same as for the Superior Court. The court shall issue its decision within 30 days of the date of the decision of the Superior Court.

[PL 1987, c. 119, §1 (AMD).]

SECTION HISTORY

PL 1985, c. 161, §6 (NEW). PL 1987, c. 119, §1 (AMD). PL 1993, c. 352, §2 (AMD). PL 2009, c. 611, §5, 6 (AMD). PL 2017, c. 277, §6 (AMD).

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