



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 114

H.P. 96

House of Representatives, January 17, 2019

### **An Act To Establish Open Primaries for Certain Federal and State Offices**

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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 RYKERSON of Kittery.  
Cosponsored by Senator GRATWICK of Penobscot and  
Representatives: ACKLEY of Monmouth, DENK of Kennebunk, MASTRACCIO of Sanford,  
MEYER of Eliot, SYLVESTER of Portland.

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2 **Sec. 1. 21-A MRSA §1, sub-§27-C**, as repealed and replaced by PL 2017, c. 316,  
3 §1, is amended to read:

4 **27-C. Elections determined by ranked-choice voting.** "Elections determined by  
5 ranked-choice voting" means:

6 A. Primary elections for the offices of United States Senator, United States  
7 Representative to Congress, Governor, State Senator and State Representative;

8 ~~B. General and special elections for the offices of United States Senator and United  
9 States Representative to Congress; and~~

10 **Sec. 2. 21-A MRSA §1, sub-§§27-D and 27-E** are enacted to read:

11 **27-D. Elections subject to an open primary.** "Elections subject to an open  
12 primary" means the elections for the offices of United States Senator, United States  
13 Representative to Congress, Governor, State Senator and State Representative.

14 **27-E. Open primary election.** "Open primary election" means, in elections subject  
15 to an open primary, the regular election for the election of 2 candidates, regardless of  
16 enrollment status, who will appear on the ballot for the general election.

17 **Sec. 3. 21-A MRSA §1, sub-§32**, as amended by PL 1987, c. 423, §1, is further  
18 amended to read:

19 **32. Primary election.** "Primary election" means the regular election for the election  
20 of nominees of a party for the general election or, for an election subject to an open  
21 primary, the open primary election.

22 **Sec. 4. 21-A MRSA §1, sub-§35-A**, as enacted by IB 2015, c. 3, §2, is amended  
23 to read:

24 **35-A. Ranked-choice voting.** "Ranked-choice voting" means the method of casting  
25 and tabulating votes in an open primary election in which voters rank candidates in order  
26 of preference, tabulation proceeds in sequential rounds in which last-place candidates are  
27 defeated and the ~~candidate~~ 2 candidates with the most votes in the final round ~~is elected~~  
28 are nominated to appear on the ballot for the general election.

29 **Sec. 5. 21-A MRSA §144, sub-§2**, as amended by PL 2005, c. 453, §27, is  
30 further amended to read:

31 **2. Party designation removed.** On receipt of the application, the registrar shall  
32 remove the party designation of the applicant from the central voter registration system.  
33 The registrar shall indicate in the central voter registration system that the applicant is  
34 ineligible to vote at a caucus or primary election, other than an open primary election, for  
35 15 days by designating the party enrollment field with the letter "X." Fifteen days after  
36 receiving the application, the registrar shall enroll the applicant in the party requested and  
37 enter the new party designation in the party enrollment field.

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

3 **Sec. 6. 21-A MRSA §144, sub-§3**, as repealed and replaced by PL 2013, c. 457,  
4 §2, is amended to read:

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

15 **Sec. 7. 21-A MRSA §334**, as amended by PL 2009, c. 253, §16, is further  
16 amended to read:

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

18 A candidate for nomination by primary election, other than an open primary election,  
19 must file a primary petition and consent under sections 335 and 336. The candidate must  
20 be enrolled, on or before March 15th, in the party named in the petition and must be  
21 eligible to file a petition as a candidate for nomination by primary election under section  
22 144, subsection 3. The registrar in the candidate's municipality of residence must certify  
23 to that fact on a form designed by the Secretary of State.

24 **Sec. 8. 21-A MRSA §§338 and 339**, as enacted by PL 1985, c. 161, §6, are  
25 amended to read:

26 **§338. Write-in candidates**

27 A Except as provided in section 442 for an open primary election, a person whose  
28 name will not appear on the printed primary ballot because he the person did not file a  
29 petition and consent under sections 335 and 336, but who fulfills the other qualifications  
30 under section 334, may be nominated at the primary election as a write-in candidate in  
31 accordance with section 723, subsection 1.

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

33 The primary election ~~shall~~ must be held on the 2nd Tuesday of June of each general  
34 election year and, other than an open primary election, is considered to be a separate  
35 election for each party ~~which~~ that takes part in it. This includes the duties of public  
36 officials in announcing the election, providing forms and ballots, keeping records and any  
37 other matter necessary to effect the purpose of a primary election. A primary election  
38 ~~shall~~ must be conducted the same as the general election, as nearly as practicable, ~~for~~  
39 ~~each party.~~

1           **Sec. 9. 21-A MRSA §351, sub-§4** is enacted to read:

2           **4. Elections subject to an open primary.** A person may file a nomination petition  
3 pursuant to this subchapter as a candidate for the open primary election in an election  
4 subject to an open primary. A person may not file a nomination petition pursuant to this  
5 subchapter as a candidate for the general election in an election subject to an open  
6 primary.

7           **Sec. 10. 21-A MRSA §353**, as amended by PL 2009, c. 253, §19, is further  
8 amended to read:

9           **§353. Qualification of candidate for nomination by petition**

10           A person who seeks nomination by petition in an election other than an election  
11 subject to an open primary qualifies by filing a nomination petition and consent as  
12 provided in sections 354 and 355. If enrolled, the person must also withdraw enrollment  
13 in a party on or before March 1st to be eligible to file a petition as a candidate in that  
14 election year, as provided in section 145. The registrar in the candidate's municipality of  
15 residence must certify to that fact on a form designed by the Secretary of State.

16           **Sec. 11. 21-A MRSA §354, sub-§7, ¶B**, as amended by PL 2013, c. 131, §12, is  
17 further amended to read:

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

24           **Sec. 12. 21-A MRSA §354, sub-§8-A**, as amended by PL 2013, c. 131, §13, is  
25 further amended to read:

26           **8-A. Filed with the Secretary of State.** A nomination petition must be filed in the  
27 office of the Secretary of State by 5 p.m. on June 1st in the election year in which it is to  
28 be used, except that a nomination petition for a candidate for an election subject to an  
29 open primary must be filed in the Office of the Secretary of State by 5 p.m. on March  
30 15th of the election year in which it is to be used and petitions for a slate of candidates for  
31 the office of presidential elector must be filed in the office of the Secretary of State by 5  
32 p.m. on August 1st in the election year in which the petitions are to be used.

33           **Sec. 13. 21-A MRSA §355, sub-§1**, as amended by PL 2011, c. 534, §12, is  
34 further amended to read:

35           **1. Consent.** The consent must contain a statement signed by the candidate that the  
36 candidate will accept the nomination of the general election except that the consent  
37 signed by a candidate for an election subject to an open primary must contain a statement  
38 signed by the candidate that the candidate will accept the nomination of the open primary  
39 election. The Secretary of State shall provide a form on which the consent of the

1 candidate is made that must include a list of the statutory and constitutional requirements  
2 of the office sought by the candidate. The statement may be printed as a part of the  
3 nomination petition.

4 **Sec. 14. 21-A MRSA §363, first ¶**, as amended by PL 1993, c. 447, §3, is further  
5 amended to read:

6 The meeting of a political committee as required by sections 371, ~~373~~, 374-A, 381,  
7 382 and 393 is governed by the following provisions.

8 **Sec. 15. 21-A MRSA §365, first ¶**, as amended by PL 2003, c. 510, Pt. A, §13, is  
9 further amended to read:

10 The political committee that has jurisdiction over the choice of a candidate for  
11 nomination or a nominee to fill a vacancy under sections 371, ~~373~~, 374-A, 381 and 382 is  
12 as follows.

13 **Sec. 16. 21-A MRSA §371**, as amended by PL 2015, c. 447, §11, is further  
14 amended to read:

15 **§371. Candidates for nomination; vacancy**

16 ~~If For a primary other than an open primary election, if a candidate for nomination  
17 dies, withdraws at least 70 days before the primary or becomes disqualified after having  
18 filed the candidate's primary petition, so that a party has fewer candidates than there are  
19 offices to be filled, the vacancy may be filled by a political committee pursuant to section  
20 363. The Secretary of State shall declare the vacancy pursuant to section 362-A. Less  
21 than 70 days before the primary election, a candidate may withdraw from the primary by  
22 providing a written notice to the Secretary of State that the candidate is withdrawing and  
23 will not serve if elected. The candidate's name will not be removed from the ballot, but  
24 upon receipt of the notice of late withdrawal, the Secretary of State shall instruct the local  
25 election officials in the candidate's electoral district to distribute notices with absentee  
26 ballots requested after that date and to post a notice at each voting place in the district  
27 informing voters that the candidate has withdrawn and that a vote for that candidate will  
28 not be counted. Notice of the late withdrawal must also be posted on the Secretary of  
29 State's publicly accessible website. A candidate who withdraws from an open primary  
30 election at least 70 days before the primary or becomes disqualified after having filed the  
31 candidate's petition may not be replaced.~~

32 Less than 70 days before the primary election, a candidate may withdraw from a  
33 primary by providing a written notice to the Secretary of State that the candidate is  
34 withdrawing and will not serve if elected. The candidate's name will not be removed  
35 from the ballot, but upon receipt of the notice of late withdrawal, the Secretary of State  
36 shall instruct the local election officials in the candidate's electoral district to distribute  
37 notices with absentee ballots requested after that date and to post a notice at each voting  
38 place in the district informing voters that the candidate has withdrawn and that a vote for  
39 that candidate will not be counted. Notice of the late withdrawal must also be posted on  
40 the Secretary of State's publicly accessible website.

1           **Sec. 17. 21-A MRSA §372**, as enacted by PL 1985, c. 161, §6, is repealed.

2           **Sec. 18. 21-A MRSA §373**, as amended by PL 2001, c. 310, §23, is repealed.

3           **Sec. 19. 21-A MRSA §374-A**, as amended by PL 2015, c. 447, §§12 and 13, is  
4 further amended to read:

5           **§374-A. Withdrawal of candidates**

6           **1. Withdrawal and replacement of nominees for certain state offices.** The  
7 Secretary of State shall declare the vacancy as provided in section 362-A and a political  
8 committee may make a replacement nomination following a candidate's withdrawal only  
9 if a person nominated for an office, other than United States Senator, United States  
10 Representative to Congress or Governor, State Senator or State Representative, at a  
11 primary election or by a political committee:

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

14           B. Withdraws because of a catastrophic illness, condition or injury that has  
15 permanently and continuously incapacitated the candidate and would prevent  
16 performance of the duties of the office sought, as long as the candidate or a member  
17 of the candidate's immediate family files with the Secretary of State a certificate  
18 accompanying the withdrawal request that describes the illness, condition or injury  
19 and is signed by a licensed physician; or

20           C. Dies prior to the general election.

21           **2. Deadline for replacement of nominee.** A political committee may make a  
22 replacement nomination:

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

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

27           **3. Deadline for withdrawal.** A candidate for an office on the general election ballot  
28 must withdraw at least 70 days before the general election in order for the candidate's  
29 name to be removed from the ballot. Less than 70 days before the general election, a  
30 candidate may withdraw from the election by providing a written notice to the Secretary  
31 of State that the candidate is withdrawing and will not serve if elected. The candidate's  
32 name will not be removed from the ballot, but upon receipt of the notice of late  
33 withdrawal, the Secretary of State shall instruct the local election officials in the  
34 candidate's electoral district to distribute notices with absentee ballots requested after that  
35 date and to post a notice at each voting place in the district informing voters that the  
36 candidate has withdrawn and that a vote for that candidate will not be counted. Notice of  
37 the late withdrawal must also be posted on the Secretary of State's publicly accessible  
38 website.



1           **2. Unenrolled candidates.** Filed a nomination petition and consent that meets the  
2 requirements of sections 354 and 355, subject to challenge and appeal under section 356,  
3 and was certified by the Secretary of State pursuant to section 357.

4           **§442. Declared write-in candidates**

5           Notwithstanding any other provision of this Title to the contrary, a person who does  
6 not qualify to be listed on the open primary ballot pursuant to section 441 but who  
7 qualifies as a declared write-in candidate pursuant to section 722-A may be nominated as  
8 a write-in candidate at an open primary election.

9           **§443. Voters at an open primary election**

10           Notwithstanding any other provision of this Title to the contrary, all voters qualified  
11 to vote in the general election for United States Senator, United States Representative to  
12 Congress, Governor, State Senator and State Representative may vote in the open primary  
13 election for that office regardless of the voters' enrollment status.

14           **Sec. 22. 21-A MRSA §601, sub-§2, ¶D,** as amended by PL 2009, c. 253, §24, is  
15 further amended to read:

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

25           **Sec. 23. 21-A MRSA §601, sub-§2, ¶J,** as amended by PL 2017, c. 316, §3, is  
26 further amended to read:

27           J. For open primary elections determined by ranked-choice voting, the ballot must be  
28 simple and easy to understand and allow a voter to rank candidates for an office in  
29 order of preference. A voter may include no more than ~~one~~ 2 write-in ~~candidate~~  
30 candidates among that voter's ranked choices for each office.

31           **Sec. 24. 21-A MRSA §601, sub-§4,** as amended by PL 2001, c. 310, §29, is  
32 further amended to read:

33           **4. Distinctively colored.** When possible, election ballots must be printed on white  
34 paper. Each political party participating in a primary election other than an open primary  
35 election must have a separate ballot. The paper for each party's primary ballot must be  
36 printed or distinguished with a different color marking as determined by the Secretary of  
37 State. For municipalities that include more than one single member district of the State  
38 Senate or the House of Representatives, or parts of more than one single member district,  
39 the Secretary of State may prepare ballots with one or more distinctive color markings for  
40 each single member district or part of a single member district within the municipality.



1           **Sec. 25. 21-A MRSA §673, sub-§1, ¶A**, as corrected by RR 2011, c. 2, §21, is  
2 amended to read:

3           A. A voter or an election official may challenge another voter only upon personal  
4 knowledge or a reasonably supported belief that the challenged voter is unqualified.  
5 Only the following reasons for challenges may be accepted by the warden. The  
6 challenged person:

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

9                   (3) Is not qualified to be a registered voter because the challenged person:

10                           (a) Does not meet the age requirements as specified in section 111,  
11 subsection 2 and section 111-A;

12                           (b) Is not a citizen of the United States; or

13                           (c) Is not a resident of the municipality or appropriate electoral district  
14 within the municipality;

15                   (4) Registered to vote during the closed period or on election day and did not  
16 provide satisfactory proof of identity and residency to the registrar pursuant to  
17 section 121, subsection 1-A, except that only an election official may challenge  
18 for this reason;

19                   (5) Did not properly apply for an absentee ballot;

20                   (6) Did not properly complete the affidavit on the absentee return envelope;

21                   (7) Did not cast the ballot or complete the affidavit before the appropriate  
22 witness;

23                   (8) Communicated with someone as prohibited by section 754-A, subsection 1,  
24 paragraph B or subsection 3, paragraph B or D;

25                   (9) Did not have the ballot returned to the clerk by the time prescribed;

26                   (10) Voted using the name of another;

27                   (11) Committed any other specified violation of this Title; or

28                   (12) Voted using the wrong ballot for the appropriate electoral district or  
29 political party, if applicable.

30           **Sec. 26. 21-A MRSA §723, sub-§1**, as amended by PL 2017, c. 248, §5, is  
31 further amended to read:

32           **1. Primary election.** In a primary election other than an open primary election, the  
33 person who receives a plurality of the votes cast for nomination to any office, as long as  
34 there is at least one vote cast for that office, is nominated for that office, except for write-  
35 in candidates under paragraph A.

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

1 number of signatures required under section 335, subsection 5 on a primary petition  
2 for a 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. 27. 21-A MRSA §723, sub-§§1-A and 1-B** are enacted to read:

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

11 **1-B. General election following an open primary.** In a general election for an  
12 election subject to an open primary, the nominee who receives a plurality of the votes cast  
13 for the office, as long as there is at least one vote cast for that office, is elected to that  
14 office. A write-in candidate may not be elected in a general election for an election  
15 subject to an open primary.

16 **Sec. 28. 21-A MRSA §723-A**, as amended by PL 2017, c. 316, §§8 to 10, is  
17 further amended to read:

18 **§723-A. Determination of winners in an open primary election determined by**  
19 **ranked-choice voting**

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

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

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

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

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

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

31 F. "Last-place candidate" means the candidate with the fewest votes in a round of the  
32 ranked-choice voting tabulation.

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

35 (1) The candidate cannot be elected because the candidate's vote total in a round  
36 of the ranked-choice voting tabulation plus all votes that could possibly be  
37 transferred to the candidate in future rounds from candidates with fewer votes or

1 an equal number of votes would not be enough to surpass the ~~candidate~~ 2  
2 candidates with the next-higher vote ~~total~~ totals in the round; or

3 (2) The candidate has a lower vote total than a candidate described in  
4 subparagraph (1).

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

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

10 J. "Round" means an instance of the sequence of voting tabulation steps established  
11 in subsection 2.

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

14 **2. Procedures.** Except as provided in subsections 3 and 4, the following procedures  
15 are used to determine the ~~winner~~ winners of an open primary election determined by  
16 ranked-choice voting. Tabulation must proceed in rounds. In each round, the number of  
17 votes for each continuing candidate must be counted. Each continuing ballot counts as  
18 one vote for its highest-ranked continuing candidate for that round. Exhausted ballots are  
19 not counted for any continuing candidate. The round then ends with one of the following  
20 2 potential outcomes.

21 A. If there are ~~2~~ 3 or fewer continuing candidates, the ~~candidate~~ 2 candidates with  
22 the most votes ~~is~~ are declared the ~~winner~~ winners of the open primary election.

23 B. If there are more than ~~2~~ 3 continuing candidates, the last-place candidate is  
24 defeated and a new round begins.

25 **3. Ties.** A tie under this section between the 2nd and 3rd candidates for the most  
26 votes in the final round or a tie between last-place candidates in any round must be  
27 decided by lot, and the candidate chosen by lot is defeated. The result of the tie resolution  
28 must be recorded and reused in the event of a recount. Election officials may resolve  
29 prospective ties between candidates before the election.

30 **4. Modification of ranked-choice voting ballot and tabulation.** Modification of a  
31 ranked-choice voting ballot and tabulation is permitted in accordance with the following.

32 A. The number of allowable rankings may be limited to no fewer than 6.

33 B. Two or more candidates may be defeated simultaneously by batch elimination in  
34 any round of tabulation.

35 **5. Effect on rights of political parties.** For all statutory and constitutional  
36 provisions in the State pertaining to the rights of political parties, the number of votes cast  
37 for a party's candidate for an office determined by ranked-choice voting is the number of  
38 votes credited to that candidate after the initial counting in the first round described in  
39 subsection 2.



1           The votes in an open primary election must be tabulated using ranked-choice voting,  
2 except that the 2 candidates who receive the most votes are declared the winners of the  
3 open primary and their names must appear on the ballot for the general election. If one of  
4 the 2 candidates who received the most votes at the open primary withdraws from the  
5 race at least 70 days before the general election, that candidate must be replaced with the  
6 candidate who received the 3rd most votes in the open primary election, if any. Voters  
7 may not vote for a write-in candidate in a general election that was preceded by an open  
8 primary election. As a result, ranked-choice voting will no longer be used in general  
9 elections for United States Senator and United States Representative to Congress.  
10 Instead, the candidate who receives a plurality of votes at the general election will be  
11 elected to those offices.