

Ranked Choice Voting Roll Out Confused, But Not Stalled

Just as Secretary of State Matthew Dunlap was scheduled to provide an update to the Veterans and Legal Affairs Committee on the rules proposed to implement the June 12 election using the ranked choice voting (RCV) method, a new wrinkle appeared Thursday in the roll out.

The ranked choice voting law adopted by the voters at the November 2016 election allows voters to rank candidates for office according to preference, with the ballot tabulation mechanics providing for weighted recounts to occur until one of the candidates receives a majority (e.g., more than 50% of all votes cast) of the votes cast. Last year, efforts were made by the Legislature to amend the citizen adopted law to address concerns raised in a “solemn occasion” opinion by some justices on Maine’s Supreme Court that the use of RCV in the general election for the office of governor and legislature do not square with the Maine Constitution’s “plurality” election requirements. In contrast to the over-50% vote total required by majority election, plurality deems the winner to be the candidate who simply receives the most votes. As a result, the Legislature enacted a fix-it bill, LD 1646 (PL 2017, c. 316), that authorizes the use of the RCV method for the offices of governor and legislature, but only if Maine’s Constitution is amended. Under the terms of the Legislature’s change, failure to amend the constitution prior to Dec. 1, 2021 would result in the repeal of the ranked choice voting law.

In response to the enactment of LD 1646, supporters of RCV collected the signatures necessary to require a “people’s veto” referendum. If supported by the voters at the June primary election, sections

of the law that only allow the implementation of RCV upon amendment of the constitution would be repealed. As a result of the success of the signature gathering effort, those provisions of LD 1646 are now suspended, pending the results of the election, allowing for the use of the RCV method in June.

On Thursday Secretary Dunlap informed the Legislature of a conflict now existing in different sections of statute. Regardless of whether the people’s veto referendum is approved by the voters in June, Title 21-A, section 723 provides for the nomination of candidates in pri-

mary elections by a plurality of the votes cast. Unless remedied, Secretary Dunlap believes this identified conflict could very well lead to post election legal challenges that may nullify the statewide office candidate-selection results of the election.

Despite the current state of confusion, Secretary Dunlap assured the committee he is determined to move forward regardless of whether corrective changes are made to the law, meaning the June primary election will mark the nation’s first statewide election using the ranked choice method of voting.

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Efficiency Fund Grants Available

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The Efficiency Fund program was created as part of the Question 1-A school funding citizen initiative adopted by the voters in 2004 and the “LD 1” law enacted in 2005. The incentive program was designed to provide municipalities with financial resources to develop and implement cost effective and regionally collaborative service delivery systems. As originally enacted, the Efficiency Fund program was “self-funded” with 2% of the revenues that would have been distributed to communities through the Municipal Revenue Sharing program. However, the Legislature never properly capitalized the program and it has been dormant almost since its inception.

With the passage of the FY 2018 – FY 2019 General Fund budget, the Legislature has demonstrated a renewed interest in the

program. Included in the state’s current two year budget is an appropriation of \$3 million in FY 2018 to capitalize the Efficiency Fund program.

As such, the Department of Economic and Community Development is currently accepting proposals that “encourage inter-governmental cooperation on projects that result in cost-savings and a reduction in property taxes.” All proposals must be submitted no later than 4:00 p.m. on April 30, 2018. Proposals should be submitted to:

State of Maine Division
of Procurement Services
Burton M. Cross Building
111 Sewall Street – 4th Floor
Augusta, ME 04330

Information about the application process is posted on MMA’s website.

Ranked Choice Voting Roll Out Confused, But Not Stalled (cont'd)

Emergency Rules Update

Deputy Secretary of State Julie Flynn also attended the briefing to provide the committee with an overview of the procedures - to be adopted through the rulemaking process - that will be used to implement the RCV method in June. RCV will only be used for races with more than two candidates and, according to Deputy Secretary Flynn, will be used to determine the primary election outcomes for the candidates running for the office of governor in both of the major parties, the Democratic party primary for U.S. House of Representatives, District 2 and the Republican party primary for State House District 75, which encompasses the communities of Leeds, Turner and part of Livermore.

Using a modified process already familiar to election officials, Ms. Flynn explained that municipalities will count the first place choices locally and submit those results to the Secretary of State's Office by the Friday following after the election. In order to implement second and subsequent stages of the tabulation process required under RCV, all ballots will be sent to Augusta. The Secretary of State's proposed rules also address how the centralized tabulation will progress, including provisions for how the ballots will arrive at the identified facility, and the technical details required for the software vendor to design a program allowing the counting process to be conducted as efficiently as possible.

As would be expected, the committee had several questions.

Sen. Roger Katz of Kennebec County, who was temporarily appointed to the

committee, asked if it was fair to interpret the information she presented to mean that there is no money to fund these additional expenses. Ms. Flynn agreed.

Rep. Sheldon Harrington of Lincoln asked about the efforts being pursued to train municipal election officials, stressing his desire is to ensure that municipal officials are adequately informed in what little time is left. Ms. Flynn stated that training will be held at a conference scheduled for May 8 and 9 that will reach 250 election officials. The office also plans to conduct workshops in a few regions across the state, and is considering offering webinar-style training. She stressed that little of the information provided at the training sessions will be centered on RCV as the municipal clerks will, for the most part, conduct the election in the same manner as they have in the past.

Sen. Katz also questioned how the ballots would be securely transported from the municipality to the central counting facility, observing that statutorily, the Department of Public Safety (DPS) only needs to transport the ballots from municipalities for recount purposes, not RCV. He asked how ballots would arrive at the facility if DPS refuses to transport the ballots. Although Ms. Flynn continues to operate on the assumption of cooperation as indicated by the budget numbers DPS provided to carry out the task, she suggested that the towns would be made responsible for delivering the ballots or she would find another way. Sen. Katz suggested that the Secretary of State does

not have the authority to order municipalities to transport the ballots either.

Although the Secretary of State's proposed rules should offer some interim relief to all of the interested parties, several questions remain over financial support to implement RCV at the state and local levels, possible legal challenges resulting from a lack of legislative consensus on resolving identified issues, and continued cooperation from election security administration partners like the Department of Public Safety. Based on Thursday's briefing and the Legislature's divide on this issue, it seems the odds are unlikely that efforts to chart a more advantageous course by lawmakers will be successful, leaving the state steaming dead ahead into an iceberg of a ranked choice voting roll out.

Public comments on the proposed ranked choice voting rules will be accepted until April 6. Instructions on how to submit comments can be found at: <http://maine.gov/sos/news/2018/emergencyrulerrankedchoicevoting.html>

Comments may be submitted to Deputy Secretary Flynn directly via email at: Julie.flynn@maine.gov or mailed to:

Deputy Secretary Julie Flynn
Bureau of Corporations, Elections
and Commissions
SHS #101
Augusta, ME 04330

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Late-Session Bill Clarifies Sex Offender Setback Authority

For years, Maine law allowed municipalities to prohibit registered sex offenders from residing within 750 feet of school grounds, as well as property owned by a municipality or the state for purposes of a park, athletic field or recreational facility that is open to the public where children are the primary users. In 2013, an amendment to the existing law was adopted to add properties leased to nonprofit organizations for the same purposes.

On Wednesday, the State and Local

Government Committee held a hearing on LD 1877, *An Act To Expand the Areas Subject to Municipal Residency Restrictions for Sex Offenders*. As its sponsor, Rep. Danny Martin of Sinclair testified, the point of the bill is to address the unintended consequences of the change made by the Legislature in 2013. A town in Rep. Martin's district brought to his attention that, instead of simply adding leased property to statute, the amended

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Late-Session Bill Clarifies Sex Offender Setback Authority (cont'd)

law seemed to provide that sex offender setback restrictions could be imposed with respect to only leased property.

That town is Madawaska. As Town Manager Gary Picard explained, interpretations of the law, found in Title 30-A, section 3014, provided by the town's attorney found the residency setback allowance in state law to in fact be limited solely to property leased to nonprofit organizations. Mr. Picard testified that he hopes the Legislature will be able to clarify the law by, as he put it, closing the loophole inadvertently created when the Legislature amended the law five years ago.

Also testifying on LD 1877 were Sen. Bill Diamond of Cumberland County, MMA, and the American Civil Liberties Union (ACLU) of Maine.

Sen. Diamond described his efforts while serving on the Criminal Justice and Public Safety Committee in the early 2000's to find a way to strike the right balance in law that would ensure the protection of children while also retain-

ing some protections for the civil rights of persons required to register as sex offenders. Different drafts, he explained, were tested and re-tested to make sure they worked in both small towns as well as large cities. In his view, LD 1877 was drafted in a manner that was "way, way too broad." As printed, it would have allowed municipalities to adopt ordinances prohibiting offenders from residing within 750 feet of any municipally owned or state-owned property, regardless of its use, as well as properties leased for the purposes described above.

The ACLU also took issue with the breadth of the printed bill, testifying in opposition. In the union's view, residency setback laws and ordinances have many inherent constitutional issues, implicating due process, takings, cruel and unusual punishment, right of association, and ex-post facto conviction concerns. The ACLU also testified that there is no evidence that setbacks accomplish their intended goal.

Understanding the concerns raised

regarding the broad scope of the printed bill, MMA offered an amendment at the hearing that would achieve the Town of Madawaska's aim of enacting house-keeping-type legislation to correct what appears by all accounts to have been a simple drafting error. The amendment clarifies existing statutes by authorizing municipalities to adopt ordinances preventing registered sex offenders from residing within 750 feet surrounding a municipal owned or state-owned park, athletic field or recreation facility, as well as property leased to nonprofit organizations for those purposes, that is open to the public and where children are the primary users.

Following the testimony, the committee broke for a brief caucus then returned and suspended its rules to move immediately into the work session on LD 1877. Having heard from Sen. Diamond that MMA's amendment resolved his concerns, the committee voted unanimously in favor of the bill as amended.

LEGISLATIVE HEARINGS

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules for hearing schedules and work sessions can be found at: <http://legislature.maine.gov/Calendar/#PHWS/>.

Tuesday, April 3

Judiciary

Room 438, State House, 1:00 p.m.

Tel: 287-1327

LD 1884 – An Act To Create a Community Protection Order To Allow Courts To Prevent High-risk Individuals from Possessing Firearms.

IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill's summary statement or an excerpt from that summary statement. During the course of the legislative session, many more bills of municipal interest will be printed than there is space in the *Legislative Bulletin* to describe. Our attempt is to provide a description of what would appear to be the bills of most significance to local government, but we would advise municipal officials to also review the comprehensive list of LDs of municipal interest that can be found on MMA's website, www.memun.org.)

Taxation

LD 1891 – An Act To Improve Compliance with the Maine Tree Growth Tax Law. (Governor's Bill) (Sponsored by Sen. Cushing of Penobscot County)

This bill amends the Maine Tree Growth Tax Law by authorizing the Department of Agriculture, Conservation and Forestry, Bureau of Forestry to review certain parcels of land classified under the Maine Tree Growth Tax Law to determine whether the landowner is complying with the requirements of the law and whether the land is being managed in compliance with the forest management and harvest plan for that parcel. The bureau is required to report any noncompliance after a specified period to the assessor. The owner of a parcel found by the forestry bureau to be in noncompliance with the law may apply to reclassify the parcel as farmland or open space under the farm and open space tax law. The also requires the bureau to offer assistance to landowners found in noncompliance.