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Legislative Document

No. 1261

S.P. 382

In Senate, March 22, 2011

An Act Relating to Selection of Constitutional Officers and the State Auditor

Reference to the Committee on State and Local Government suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator PLOWMAN of Penobscot.
Cosponsored by Representative FREDETTE of Newport.

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

2 **Sec. 1. 5 MRSA §241**, as amended by PL 1997, c. 516, §1, is further amended to
3 read:

4 **§241. State Auditor; salary**

5 The State Auditor ~~shall be~~ is the head of the Department of Audit, as heretofore
6 established. ~~He shall~~ The State Auditor must be a certified public accountant or a college
7 graduate with not less than 6 years of experience as a professional accountant or auditor,
8 including not less than 5 years of auditing experience, of which not less than 4 years ~~shall~~
9 ~~have been~~ must be in a supervisory capacity. ~~He shall~~ The State Auditor must be elected
10 by the Legislature ~~by a joint ballot of the Senators and Representatives in convention~~
11 voters pursuant to Title 21-A and ~~shall hold~~ holds office for a term of 4 years or until ~~his~~
12 a successor is elected and qualified. ~~He~~ The State Auditor shall exercise ~~such~~ the powers
13 and perform ~~such~~ duties as are set forth ~~out~~ in this chapter. ~~In case the office of State~~
14 ~~Auditor shall become vacant during a period when the Legislature is not in session, the~~
15 ~~appointment of a person to fill such vacancy shall be made immediately by the President~~
16 ~~of the Senate or if that office be vacant, by the Speaker of the House, said person to hold~~
17 ~~office until such time as the Legislature shall meet in regular or special session, and either~~
18 ~~confirm the appointment of said person or choose another person to fill the office during~~
19 ~~the unexpired term.~~

20 If a person elected to the office of State Auditor is not qualified as, or has not
21 successfully completed or passed the examination for, a certified public accountant,
22 public accountant or certified internal auditor at the time of election and fails to become
23 so qualified within 9 months of being sworn into office, as required by section 242, that
24 person may no longer serve as State Auditor and ~~is ineligible for reelection by the same~~
25 ~~Legislature and the office of State Auditor is deemed vacant.~~

26 A vacancy in the office of State Auditor must be filled in the same manner as a
27 vacancy in the office of Treasurer of State.

28 **Sec. 2. 21-A MRSA §1, sub-§42**, as enacted by PL 1985, c. 161, §6, is amended
29 to read:

30 **42. State office.** "State office" means the office of Governor, State Senator,
31 Representative to the State Legislature, Secretary of State, Treasurer of State, Attorney
32 General, State Auditor or presidential elector.

33 **Sec. 3. 21-A MRSA §335, sub-§5, ¶B-2** is enacted to read:

34 B-2. For a candidate for Secretary of State, Treasurer of State or Attorney General, at
35 least 2,000 and not more than 3,000 voters;

36 **Sec. 4. 21-A MRSA §354, sub-§5, ¶C-1** is enacted to read:

37 C-1. For a candidate for State Auditor, at least 2,000 and not more than 3,000 voters;

1 **Sec. 5. 21-A MRSA §365, sub-§4**, as enacted by PL 1985, c. 161, §6, is amended
2 to read:

3 **4. State committee.** A state committee makes choices for Governor, United States
4 Senator, State Auditor and presidential elector.

5 **Sec. 6. 21-A MRSA §372**, as enacted by PL 1985, c. 161, §6, is amended to read:

6 **§372. Nominees; 60 days or more before election**

7 If a person nominated for United States Senator, Representative to Congress, State
8 Auditor or Governor at a primary election dies, withdraws or becomes disqualified at
9 least 60 days before the general election, the Governor shall issue a proclamation
10 declaring the vacancy and ordering a special primary election under section 366.

11 **Sec. 7. 21-A MRSA §373**, as amended by PL 2001, c. 310, §23, is further
12 amended to read:

13 **§373. Nominees; less than 60 days before election**

14 If a person nominated for United States Senator, Representative to Congress, State
15 Auditor or Governor at a primary election or by a political committee dies, withdraws or
16 becomes disqualified less than 60 days before the general election, the Secretary of State
17 shall declare the vacancy under section 362-A.

18 **Sec. 8. 21-A MRSA §374-A, sub-§1**, as amended by PL 2001, c. 310, §24, is
19 further amended to read:

20 **1. Withdrawal and replacement of nominees.** The Secretary of State shall declare
21 the vacancy as provided in section 362-A and a political committee may make a
22 replacement nomination following a candidate's withdrawal only if a person nominated
23 for an office, other than United States Senator, Representative to Congress, State Auditor
24 or Governor, at a primary election or by a political committee:

25 A. Withdraws on or before 5 p.m. of the 2nd Monday in July preceding the general
26 election;

27 B. Withdraws because of a catastrophic illness that has permanently and
28 continuously incapacitated the candidate and would prevent performance of the
29 duties of the office sought, ~~provided if~~ provided if the candidate or a member of the candidate's
30 immediate family files with the Secretary of State a certificate accompanying the
31 withdrawal request, ~~which~~ that describes the illness and is signed by at least 2
32 licensed physicians; or

33 C. Dies prior to the general election.

34 **Sec. 9. 21-A MRSA §376, sub-§1**, as amended by PL 1997, c. 436, §55, is
35 further amended to read:

1. Federal or gubernatorial office or State Auditor. If a candidate or nominee for a federal or gubernatorial office or State Auditor withdraws less than 60 days before any election, the Secretary of State is not required to produce new ballots.

Sec. 10. 21-A MRSA §376, sub-§2, as amended by PL 1997, c. 436, §55, is further amended to read:

2. Certain state offices. The Secretary of State is required to produce new ballots only if a candidate for an office, other than United States Senator, Representative to Congress, State Auditor or Governor, withdraws in accordance with section 374-A, subsection 1, paragraph A, B or C, a replacement candidate is nominated and a notification is filed with the Secretary of State by the appropriate committee of the political party making the nomination no later than 60 days before the election.

Sec. 11. 21-A MRSA §601, sub-§3, as amended by PL 2007, c. 455, §19, is further amended to read:

3. Order of offices. The order of offices on the ballot is as follows: President, United States Senator, Governor, Representative to Congress, State Senator ~~and~~, Representative to the Legislature and State Auditor, and the county offices in the following order: judge of probate, register of probate, county treasurer, register of deeds, sheriff, district attorney and county commissioner.

Sec. 12. 21-A MRSA c. 17 is enacted to read:

CHAPTER 17

CONSTITUTIONAL OFFICERS

§1301. Referendum

A statewide referendum must be held every 2 years, at the same time as the general election, permitting the voters to express a choice of candidates for the offices of Secretary of State, Treasurer of State and Attorney General. Except as otherwise provided, the requirements and process of nomination, party qualification and manner of filling candidate vacancies are the same as the requirements and process for Governor under chapter 5.

The Secretary of State shall notify each Legislature, on the date of its first convening, of the number of votes cast at the referendum under this section for each candidate for Secretary of State, Treasurer of State and Attorney General. The Legislature shall select those officers in the manner provided in the Constitution of Maine and legislative procedures. The results of the referendum are not binding on the Legislature.

SUMMARY

This bill provides a mechanism for a voter referendum on candidates for Secretary of State, Treasurer of State and Attorney General. Nomination, party qualification and manner of filling vacancies leading up to the referendum are conducted in the same

1 manner as for candidates for Governor. The selection of individuals to hold the offices of
2 Secretary of State, Treasurer of State and Attorney General continues to be made by the
3 Legislature as provided in the Constitution of Maine.

4 The bill also provides for the election of the State Auditor by the voters.