

Checks and Balances in Maine: The Post-Election Day Process

American elections are run by local and state officials alongside tens of thousands of our friends and neighbors from both political parties. These bipartisan teams count, canvass, and audit every ballot — whether in person or by mail — verifying identities, inspecting ballots, and ensuring each is counted as intended. This rigorous process leads to the final step: certification. This is the straightforward phase of the process, in which election officials declare the winners.

This memo outlines the checks and balances in Maine that ensure all state and local rules are followed. Importantly, this is nonpartisan educational research intended for 501(c)(3)-compliant purposes only. It is not to be used for any partisan, political, or electioneering activities by any organization.

Counting: Technology and Bipartisan Oversight Ensure Accurate Results

Maine law mandates specific processes for the counting of votes. All counties are allowed to use electronic tabulation equipment.¹ Counting requires participation by a team of bipartisan election workers and includes equipment testing and periodic reconciliation of results.

Quality-Tested Technology Leads to Trustworthy Results

Ballots are counted at either individual precincts or a central counting location. Maine law requires tabulation equipment to be tested before polls open to ensure the accuracy of the system.²

Electronic tabulation equipment must return error-free counts to be used in an election.³ Testing is open to the public and must be conducted in the presence of at least one witness.⁴

¹ 21-A M.R.S. § 842

² 21-A M.R.S. § 854

³ Id.

⁴ Id.

Transparent Processes Instill Confidence

In Maine, any voter may cast an absentee ballot by mail or during early in-person voting. These ballots may be signature verified upon receipt.⁵ Voters must be notified of any signature discrepancy within one business day of verification and allowed to cure their ballots by the close of polls on Election Day.⁶

Municipalities may begin processing absentee ballots before polls close on Election Day if they provide notice at least seven days in advance.⁷ Otherwise, processing — including counting ballots and releasing results — cannot begin until after polls close at 8 p.m. Ballots cast on Election Day are fed directly into an electronic tabulation machine — used by the majority of municipalities — or placed in a ballot box.⁸

After polls close, each tabulation machine prints an official tally tape. The election official (election warden) records the vote totals from the tape on a tally sheet, and the election warden and one election worker from each of the two major parties sign the tally tape. The official tally tape and other election materials are packed in a tamper-proof box, and a copy of the tally tape and tally sheets are provided to the municipal clerk.⁹

In jurisdictions that hand-count ballots, bipartisan teams separate ballots into lots of 50 and count them following procedures set by the secretary of state.¹⁰ Each counting team produces two tally sheets whose totals match. The counting team signs one tally sheet, which is kept with that lot of ballots, and provides the second tally sheet to the election warden, who compiles the tally for each office at that voting location.¹¹ Ballot counting, whether conducted by hand or electronic tabulation, is open to the public.¹²

As soon as the election results have been declared, the election warden prepares the election returns. The warden prepares election return forms showing the number of votes cast for each candidate or question and records the total number of state ballots cast in that ward or precinct. The warden and one other election worker must sign the return and deliver it immediately to the municipal clerk.¹³

After completing all election returns, election workers secure the ballots, tally tapes, and other election materials in tamper-proof ballot containers, which must be kept sealed for at least two months.¹⁴ After two months, the municipal clerk must open the containers in the presence of at least one witness and transfer the ballots to other securely sealed containers for the remainder of the 22-month retention period.¹⁵

⁵ 21-A M.R.S. § 756

⁶ 21-A M.R.S. § 756-A

⁷ 21-A M.R.S. § 759(7)

⁸ 21-A M.R.S. § 852(3)

⁹ 21-A M.R.S. § 852(5A)

¹⁰ 21-A M.R.S. § 695

¹¹ *Id.*

¹² 21-A M.R.S. § 852(5)

¹³ 21-A M.R.S. § 711

¹⁴ 21-A M.R.S. § 698(2-A)

¹⁵ *Id.*, 21-A M.R.S. § 23(7)

Both Parties Participate Throughout the Process

Election officials select election workers (typically called election clerks) from nomination lists provided by both major political parties and the municipal clerk.¹⁶ Each voting and counting location must have at least two election workers — one from each major political party. In locations where more than two election workers are required, the number of election workers from one major party may never exceed the number from the other party by more than one.¹⁷

Audits Give Final Check For Tabulation Accuracy

To further ensure the accuracy of electronically tabulated results, the secretary of state may conduct a risk-limiting audit after any state or federal election.¹⁸

The secretary of state is responsible for establishing the “risk limit,” a statistical principle “designed to limit the risk that certified election returns may produce an incorrect outcome.”¹⁹ Auditors are required to visually examine each original paper ballot selected for the audit.²⁰

The risk-limiting audit is open to the public, and public notice must be given at least 24 hours in advance of the audit.²¹ Statute does not specify a timeline for completing the audit.

Canvassing: A “Non-Discretionary Duty”

Canvassing is the process of compiling vote totals reported in returns from throughout a jurisdiction. In Maine, canvassing occurs at the municipal and state levels.

Municipal Canvass: Municipal Clerk Compiles and Verifies Results

The municipal clerk is responsible for conducting the municipal canvass of each election.²² After election wardens provide all election returns to the municipal clerk, the clerk compiles the municipal return and delivers it to the secretary of state.²³ The secretary of state must receive the municipal canvass by 5 p.m. on the second business day after the election.²⁴

The municipal clerk has the authority to correct any tabulation or recording errors on the election returns, based on the tally sheets or copies of the tally tapes. The clerk cannot change the totals on the original election return prepared by the warden, but must make

¹⁶ 21-A M.R.S. § 503-A(2)

¹⁷ 21-A M.R.S. § 503-A(4)-(5a)

¹⁸ 21-A M.R.S. § 726

¹⁹ 21-A M.R.S. § 726(3)

²⁰ *Id.*

²¹ 21-A M.R.S. § 726(5)

²² 21-A M.R.S. § 711

²³ 21-A M.R.S. § 711(1)-(2)

²⁴ 21-A M.R.S. § 711(3)

the correction on an attested copy, with an explanation of the reason for the correction.²⁵

State Canvass: Secretary of State Compiles the Results and Makes Them Public

The secretary of state is responsible for conducting the state canvass for all elections.²⁶

The state canvass must occur within 20 days after the election.²⁷

The secretary of state compiles the municipal election returns to tabulate the total votes for each question choice or candidate, submits a certified copy of the final tabulation to the governor, and makes the final results public.²⁸

Certification: The Voters Have Spoken

Once the state canvass is complete, winning candidates receive a certificate of election. The secretary of state prepares, and the governor signs, the certificate for each person elected to office.²⁹

Following an Electoral College vote to select the president of the United States, the secretary of state must promptly transmit a Certificate of Ascertainment to the archivist of the United States by the deadline provided under federal law.³⁰

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²⁵ 21-A M.R.S. § 711(2-A)

²⁶ 21-A M.R.S. § 722

²⁷ Id.

²⁸ Id.

²⁹ 21-A M.R.S. § 724

³⁰ 3 U.S. Code § 5; 21-A M.R.S. § 803(1)