Rule-Making Cover Sheet

2018-230

TO: **Secretary of State**
ATTN: **Administrative Procedure Officer,**
State House Station 101, Augusta, Maine 04333.

1. **Agency:** **Department of the Secretary of State**
Bureau of Corporations, Elections and Commissions
Division of Elections

2. **Agency umbrella and unit number:** **29-250**
(2 digit umbrella # and 3 digit unit #)

3. **Title of rule: Rules Governing the Administration of Elections Determined By Ranked-Choice Voting**

4. **Chapter number assigned to the rule:** **535**
(must be 3 digits or less)

ACCEPTED FOR FILING
NOV - 2 2018
SECRETARY OF STATE

5. **Date(s)/method(s) of notice:**

6. **Date(s)/place(s) of hearing(s): Not applicable**

7. **Type:** ☒ new rule ☐ partial amendment(s) of existing rule

☐ suspension of existing rule ☐ repeal of rule ☐ emergency rule

☐ repeal and replace: complete replacement of existing chapter, with former version simultaneously repealed.

8. **Name/phone of agency contact person:** **Julie L. Flynn**
207-624-7736

9. **If a major substantive rule under Title 5, c. 375, sub-CII-A, check one of the following**

☐ **Provisional adoption** ☒ **Final adoption**
(prior to Legislative review)
☐ **emergency adoption of major-substantive rule**

10. **Certification Statement:** I, MATTHEW DUNLAP hereby certify that the attached is a true copy of the rule(s) described above and lawfully adopted by DEPARTMENT of the SECRETARY of STATE (name of agency) on 11-2-2018 (date).
I further certify that all portions of this rule are adopted in compliance with the requirements of the Maine Administrative Procedure Act.

Signature: _____
(original signature, personally signed by the head of agency)

Printed name & title: MATTHEW DUNLAP, SECRETARY of STATE

RECEIVED
NOV 02 2018
OFFICE OF THE SECRETARY OF STATE
AUGUSTA MAINE

EFFECTIVE DATE: **November 7, 2018**

11. Approved as to form and legality by the Attorney General on 11/2/2018 .
(date)

Signature _____ .
(original signature, personally signed by an Assistant Attorney General)

Printed Name: Nancy Macirowski, Assistant Attorney General

29-250 DEPARTMENT OF THE SECRETARY OF STATE
BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS
DIVISION OF ELECTIONS

Chapter 535: RULES GOVERNING THE ADMINISTRATION OF ELECTIONS DETERMINED BY RANKED-CHOICE VOTING

SUMMARY: This rule sets forth the procedures for the administration of elections determined by ranked-choice voting, including collection, security and handling of ballots and memory devices between the municipal offices and the central counting facility; aggregating and counting the cast vote records; administering the rounds of ranked-choice counting until only two candidates remain, and the candidate with the most votes in the final round is the winner; and reporting the results.

SECTION 1. Applicability of Ranked-choice Voting

Elections for an office defined in 21-A M.R.S.A. §1, sub-§27-C will be determined by the ranked-choice voting process described in these rules when there are three or more candidates who have qualified to be listed on the ballot for that office or when there is a combination of at least two candidates who have qualified to be listed on the ballot for that office plus at least one declared write-in candidate.

SECTION 2. Definitions

1. "Continuing ballot", as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph B, means a ballot that is not an exhausted ballot.

2. "Continuing candidate," as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph C, means a candidate who has not been defeated.

3. "Election results reporting program" means the software program that is compatible with the current tabulation system used by the state and is capable of processing and aggregating the results and cast vote records.

4. "Ranking," as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph I, means the number or the numeric position assigned on a ballot by a voter to a candidate to express the voter's preference for that candidate. Ranking number one is the highest ranking, ranking number two is the next-highest ranking and so on.

5. "RCV count" means the ranked-choice counting process defined in these rules.

6. "RCV counting facility" means a facility in the Augusta area selected by the Secretary of State and the room or rooms in that facility in which one or more RCV counts will take place.

7. "RCV counting utility" means a specialty software program or utility that incorporates the ranked-choice vote counting requirements defined in Section 4, subsection 2 of these rules, and electronically completes the rounds of the RCV count.

8. "Skipped ranking," as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph K, means a circumstance in which a voter has left a ranking blank and ranks a candidate at a subsequent ranking.

9. "UOCAVA election officials" means the officials who centrally process and count the absentee ballots received by the Secretary of State from Maine uniformed service and overseas voters pursuant to Chapter 525, Rules for Administering the Central Issuance and Processing of UOCAVA Absentee Ballots.

SECTION 3. Ballot Design

1. **Authority of Secretary of State.** The Secretary of State has the sole authority to determine the design of ballots containing ranked-choice voting contests, including whether to place ranked-choice contests and non-ranked-choice contests on the same or separate ballot pages. This determination will be made after the candidate filing deadline has passed, when the number of contests subject to ranked-choice voting and the number of candidates who have qualified for those contests is known. Ranked-choice contests will be grouped together and presented either on a separate ballot page from the non-ranked-choice contests, or on one side of a combined ranked-choice and non-ranked-choice ballot page. Ballot heading information and specific instructions will be presented above or next to the first contest of each type (i.e., ranked-choice contest, non-ranked-choice contest or referendum contest). Each ballot page or grouping of contests will adhere to the ballot order and layout requirements, as near as practicable, of 21-A M.R.S.A. §601, §604-A, §723-A. The final design will be based on the space and design limitations of the ballot design software, while following the best practices for ballot design to the greatest extent possible.

2. **Ranked-choice layout.** The ballot will be designed in a manner that allows voters to rank as many candidates as they wish, up to and including all listed candidates and one declared write-in candidate, in order of choice. If there is no declared write-in candidate who has qualified in accordance with 21-A M.R.S.A. §722-A for a ranked-choice voting contest, then the Secretary of State may eliminate the write-in space for the contest so that the voter will have the ability to rank only the candidates listed on the ballot.

SECTION 4. Vote Counting Procedures

1. **Municipal vote counting and reporting.** After the polls close on election day, election officials in each municipality will tally the ballots either by hand-count or by using an approved tabulation system as authorized by the Secretary of State and will record the first choice votes cast for all ranked-choice voting contests in the same manner as for contests determined by plurality pursuant to 21-A M.R.S.A. §695. Each municipality will prepare an election return and will submit an attested copy of the election return to the Secretary of State within 3 business days after election day as provided in 21-A M.R.S.A. §§ 711 and 712.

2. **Ranked-choice vote counting**

A. **General procedures.** If no candidate receives more than 50% of the first choice votes based on the election returns provided by municipalities under subsection 1 of this section, the RCV count must be conducted under the supervision of the Secretary of State in successive rounds, as further described in Section 6 of these rules. In each round, the number of votes for each continuing candidate must be counted. Each continuing ballot counts as one vote for its highest-ranked continuing candidate for that round. Exhausted ballots are not counted for any continuing candidate. At the end of each round, if more than 2 candidates remain, the last-place candidate is defeated, and the vote for the next-highest-ranked continuing candidate on the defeated candidate's ballots is then counted in the next round. More than one candidate may be defeated in a single round by batch elimination, as defined in paragraph B(7) below. In the final round, when only 2 continuing candidates remain, the candidate with the most votes in that round is the winning candidate.

B. **Handling of certain ballot rankings.** As provided in 21-A M.R.S.A §723-A, sub-§1, and these rules, the following ballot ranking situations will be counted as follows:

(1) **Overvote.** An overvote occurs when a voter marks more than one candidate for the same ranking (i.e., in the same ranking column). An overvote invalidates the overvoted rankings and all subsequent rankings marked for that contest on the ballot.

(2) **Single skipped ranking.** A single skipped ranking occurs when a voter does not mark (i.e., skips or leaves blank) a ranking but marks the subsequent ranking for a candidate. The single skipped ranking is ignored, and the subsequent ranking is counted in the current round, as long as that ranking is for a continuing candidate. For example, if the voter did not mark any candidate for the first ranking, but marked a continuing candidate for the second ranking, then the second ranked choice is counted in the first round of the RCV count.

(3) **Two consecutive skipped rankings.** When a voter does not mark (i.e., skips or leaves blank) two or more consecutive rankings, then the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.

(4) **Duplicate ranking for the same candidate.** A duplicate ranking occurs when a voter marks more than one ranking column for the same candidate. If a voter marks a duplicate ranking for one candidate and ranks no other candidates, then the ballot will be counted for the highest ranking of that candidate. If the candidate with the duplicate ranking is defeated, the ballot is deemed exhausted for that contest and no subsequent candidate rankings marked on that ballot are counted. If a voter marks a duplicate ranking for one candidate but also ranks other candidates, and if the candidate with the duplicate ranking is defeated,

then the vote for the next continuing candidate ranked by that voter will be counted in the next round.

(5) **No ranking for a continuing candidate.** In any round, if a voter has not ranked any continuing candidate, the ballot is deemed exhausted for that contest, and no subsequent candidate rankings marked on that ballot are counted.

(6) **Ties.** A tie between candidates for the most votes in the final round must be decided by lot and the candidate chosen by lot is defeated. A tie between last-place candidates in any other round must be decided by lot and the candidate chosen by lot is defeated, except that tied candidates who are mathematically impossible to be elected as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph G, may be defeated by batch elimination, as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph A. The result of the tie resolution must be recorded and relied upon in the event of a recount.

(7) **Batch elimination.** Batch elimination means the simultaneous defeat of multiple candidates for whom it is mathematically impossible to be elected, as defined in 21-A M.R.S.A. §723-A, sub-§1, paragraph G.

SECTION 5. Preparation for Ranked-choice counting

1. **Central location for ranked-choice count.** The Secretary of State will select a suitable facility in the Augusta area, in which to securely store the election materials and conduct the RCV count. The space used for storage of ballots and memory devices that contain cast vote records must be secured against access by unauthorized personnel and all access must be logged. The Secretary of State is responsible for security of the storage and counting space. No ranked-choice counting personnel will have access to the areas where ballots or memory devices are stored unless accompanied by at least one other authorized person.

2. **Retrieval of election materials.** The Secretary of State will contract with a private courier service (hereafter "courier") to provide secure retrieval of the election materials from the affected municipalities and deliver them to the RCV counting facility if an RCV count is needed. Once the Secretary of State determines that an RCV count is needed for one or more ranked-choice contests, the Secretary of State will notify the courier and the affected municipalities that election materials will be retrieved. The courier is responsible for the coordination and retrieval of the ballots and/or memory devices, as applicable, from the affected municipalities; transportation of these materials to the RCV counting facility; and ensuring the security of these materials while in the courier's custody. The Secretary of State will provide transmittal forms to document the chain of custody from the municipality to the courier's personnel. Secretary of State personnel at the RCV counting facility will accept and log the materials upon receipt from the courier. Municipalities that used the digital scan tabulators to tabulate their ballots will provide the courier with all memory devices containing results and cast vote records for the election. The Secretary of State will provide transmittal packaging and tamper-evident seals to be used for memory device transmittal. If any ballots were not scanned by a tabulator, the municipality must seal these ballots in a separate container or envelope from the fully scanned and counted

ballots, and must provide the container or envelope of unscanned ballots to the courier along with the memory devices. Municipalities that hand-counted their absentee and election day ballots must provide the courier with all tamper-proof containers used to seal the hand-counted ballots cast in the election.

3. **Ranked-choice counting personnel.** The following personnel may participate in the ranked-choice counting process.

   A. **Supervisor of ranked-choice voting count.** The ranked-choice counting rounds will be conducted under the supervision of the Secretary of State, or his or her designee, who is called the RCV Supervisor. The RCV Supervisor will direct and oversee the conduct of the RCV count according to all applicable laws, rules and procedures.

   B. **Ranked-choice voting assistants.** The Secretary of State or RCV Supervisor will designate the necessary number of Department staff to act as RCV Assistants. If additional personnel are needed, the Secretary of State may designate municipal election officials or UOCAVA election officials to act as RCV Assistants.

   C. **Security personnel.** The Secretary of State may use law enforcement personnel from the Department's Office of Investigations to receive the election materials from the courier's personnel and secure the materials at the RCV counting facility.

   D. **Vendor support staff.** The Secretary of State may authorize support staff from the voting system vendor to be present during the ranked-choice voting count to assist ranked-choice counting personnel with using the software and hardware necessary to complete the count.

   E. **Additional staff.** The Secretary of State and the Department's legal counsel may assist with the RCV count as needed.

4. **Notice of public proceeding.** The RCV count is a public proceeding, and members of the media and the general public may attend, to the extent the space allows. The Secretary of State will provide notice to the public regarding the RCV count for each contest, including information about scheduling. Depending on the number of municipalities in the district for the particular contest that is subject to an RCV count, and at the discretion of the RCV Supervisor, the RCV count will be scheduled to begin once the materials from a sufficient number of municipalities in the district have been received at the RCV counting facility, so that the RCV count can proceed in an orderly and efficient manner.

SECTION 6. Process for Ranked-choice counting

1. **Security of the ranked-choice counting area.** There will be a guardrail enclosure set up to separate the ranked-choice counting area from the public viewing area at the RCV counting facility. Only the ranked-choice counting personnel designated in Section 5 of this rule will be allowed inside the guardrail enclosure. All persons allowed inside the guardrail must sign in each day, on a form provided by the Secretary of State. Candidates, media and members of the general public must remain outside the guardrail area. Only limited conversation will be permitted in the RCV counting facility. Cell phones must be

silenced during the count and may be used within the guardrail area only by the ranked-choice counting personnel as needed to conduct the process. Any person who causes a disruption of the RCV count may be removed from the room, at the discretion of the RCV Supervisor.

2. **Inspection of Materials.** Prior to opening tamper-proof containers of ballots that were hand-counted on election night, or sealed packages containing memory devices for ballots that were machine tabulated on election night, the ranked-choice counting personnel will inspect each container or package to document whether it was properly sealed. As each container or package is opened and ballots or memory devices are removed and processed, personnel will complete a tracking log.

3. **Processing of ballots and memory devices.** The following activities may be conducted simultaneously or consecutively, depending on the number of ranked-choice counting personnel available.

   A. **Hand-counted ballots.** Tamper-proof containers of ballots that were hand-counted on election night will be unsealed and scanned through a tabulating device in order to obtain electronic results and cast vote records. RCV Assistants will be assigned to unseal the tamper-proof containers of hand-counted ballots, remove the ballots related to the ranked-choice contest(s) to be counted, and prepare them for scanning. This will be done on a municipality-by-municipality basis and an RCV assistant will generate a report of the scanned results. On a periodic basis, the memory devices from the hand-count ballot scanning will be uploaded into the election results reporting program.

   B. **Machine-tabulated ballots.** Packages containing memory devices from municipalities whose ballots were machine-tabulated on election night will be unsealed and the contents uploaded into the election results reporting program. RCV Assistants will be assigned to perform this task. This will be done on a municipality-by-municipality basis and an RCV assistant will generate a report of the results that were uploaded.

   C. **Ballots that cannot be scanned.** Ballots that cannot be scanned, either by the tabulating device used by the Secretary of State at the central location for the RCV count or by the ballot tabulator used by the municipality, must be manually entered into a spreadsheet to create an electronic cast vote record for these ballots. The creation of the cast vote record spreadsheet and subsequent proofreading of the spreadsheet will be done by a team of two ranked-choice counting personnel. After the cast vote record for all ballots that could not be scanned are entered and verified, the file will be uploaded into the election results reporting software.

   D. **Storage and return of processed materials.** After the process of scanning ballots and uploading memory devices is completed for each municipality, the materials will be resealed in the containers or delivery packages and secured by the Secretary of State until after any recount period has passed. After the recount period has expired, or after any requested recount has been completed, ballots will be returned to the municipality of origin, while memory devices will be delivered to the Elections Division for coding the next election.

E. **Hardware and software.** The Secretary of State will use hardware and software compatible with the current tabulating system for performing the RCV count. Precinct tabulators or high-speed tabulators used for scanning the hand-counted ballots will be non-networked devices and will not be connected to the internet or employ any wireless technology. The computers used for the election results reporting program will be a self-contained, single-purpose, hard-wired network and will not be connected to the internet or employ any wireless technology. The Secretary of State will procure a software utility or algorithm that incorporates the ranked-choice vote counting requirements as described in section 4, subsection 2 of these rules. The RCV counting utility will utilize the cast vote records and apply the ranked-choice vote counting requirements to complete the rounds of the RCV count and determine a winner.

F. **Quality control reports.** As each municipality's results are uploaded into the election results reporting program, the RCV Supervisor or an RCV Assistant will generate a report of the total ballots cast to compare with the total ballots cast figure reported by the municipality based on the election night count. This comparison will be used to verify that all results from election night for each municipality have been uploaded or all hand-count ballots have been scanned and results uploaded.

4. **Ranked-choice vote reporting.** After all the results from each ranked-choice voting election are uploaded and verified in the election results reporting program, the RCV Supervisor will initiate the RCV counting utility. Reports will be generated to document the round-by-round results as well as the final winner. However, if the results from all but a few small jurisdictions have been uploaded and verified in the election results reporting program by the end of the day on the Monday after the election, then the RCV Supervisor may initiate the RCV counting utility to produce an unofficial result. The RCV Supervisor must run the RCV counting utility again once the results from all the jurisdictions have been uploaded and verified in the election results reporting program, in order to produce an official result for the RCV election. The Secretary of State will report the statewide ranked-choice result to the Governor and will publish the results on the Department's public website along with the complete digital cast vote record, as soon as possible after completing the RCV count.

STATUTORY AUTHORITY:
21-A MRS §723-A sub-§5-A

EFFECTIVE DATE:

Blank

BASIS STATEMENT:

Ranked-choice voting ("RCV") is a method of counting ballots and determining the outcome of election contests that applies when three or more candidates have qualified for the ballot and no candidate receives a majority of the first choice votes counted at the municipal level. It requires the collection of ballots or memory devices from all of the voting jurisdictions within an electoral district and processing at a central counting facility by staff of the Secretary of State's Office. The purpose of the rule is to detail procedures that are not adequately described in statute.

Summary and Response to Comments Received for Chapter 535: Rules Governing the Administration of Elections Determined by Ranked-choice Voting

Ann Luther, representing the League of Women Voters of Maine, was the only person who submitted comments related to this rule. She both spoke at the public hearing and submitted her comments in writing on September 27, 2018. Following is a summary of these comments, along with our responses:

Overall Comment:

The commenter recommends adding language to the rule indicating that no individual will have access to the ballots alone and that the public will have an opportunity to monitor all access to the ballots when the containers are open.

Response:

With regard to the first part of the comment, we have added language in Section 5.1 to specify that no ranked-choice counting personnel will have access to areas where the ballots and/or memory devices are stored, unless they are accompanied by at least one other authorized person. We believe that the second part of the comment is already addressed in Section 6.2 of the rule.

Comment on section 3.2:

The commenter recommends adding language to say that if there are more than six candidates, the Secretary of State may limit the number of rankings to no fewer than six. This would allow the Secretary of State to preserve the option to limit the rankings to six as provided by law.

Response:

The Secretary of State is not opting to limit the rankings at the present time, and thus is not making a change in response to this comment.

Comment on section 4.2:

The commenter suggests that ballots that have a skipped ranking in the first choice column should count in the denominator when deciding whether the 50% threshold has been achieved. In other words, the determination of whether a candidate has received more than 50% of the first choice votes should be based on the number of total ballots cast (including blanks) rather than on the number of total votes cast (for candidates only).

Response:

For recount determinations and other thresholds in Title 21-A, the number is based on the total votes cast for the candidates (not including blanks) rather than on total ballots cast. We believe this threshold should be consistent with other sections of the election law. In addition, the majority

of first choice votes (not ballots) is what determines whether the RCV method must be utilized under the statute. For these reasons, we are not making a change in response to this comment.

Comment on section 5.2:

The commenter recommends that the Secretary of State establish a "default presumption" that the ballots and memory sticks will be retrieved as soon as possible after Election Day and should change the rule to state that election materials will be retrieved beginning on the Wednesday or Thursday after Election Day. The "plan to retrieve" should be by default, not requiring a specific determination by the Secretary of State.

Response:

We believe that the current language of the rule provides the Secretary of State with the needed flexibility to retrieve the ballots in the most efficient manner, once it appears certain that an RCV count will be necessary. It is not feasible to begin retrieving materials on Wednesday in any case, as municipalities may have worked until Wednesday morning completing the initial election night count. Accordingly, we are not making a change to the rule in response to this comment.

Comment on section 5.4:

The commenter believes that the "majority of municipalities" rule is too high a threshold to use for triggering the public proceeding, and that it could delay processing. They would like to see the public proceeding commence on the Thursday or Friday after the election, as soon as election materials begin arriving at the central counting facility, regardless of the number of municipalities whose materials have been delivered to the counting facility.

The commenter also notes that the public and campaigns were interested in observing the process of ballot retrieval from the time the courier arrived at the central counting facility and suggests that the public process should begin there.

Response:

The Secretary of State has to be able to manage the RCV count in the most efficient and effective manner possible, including the ability to log and organize the boxes and envelopes to prepare for orderly processing. In June, a majority of the towns' materials were delivered to the RCV counting facility by early Thursday evening, so we were prepared to conduct a whole day of RCV counting on Friday. However, we have changed the wording from "a majority" to a "sufficient number" of towns, as we believe that provides us with more flexibility on scheduling.

With regard to the second comment on allowing public observation of the ballot delivery to the counting facility, the arrival of the courier service at the RCV counting facility will be easy for the public to observe, which will allow them to see that the materials are all locked and sealed upon arrival. There is not enough space inside the entryway to enable the public to observe every other step involved in moving, organizing and logging sealed containers of ballots and sealed envelopes of memory sticks. Those steps are part of an administrative process conducted by trained, professional

staff. Given that all materials are sealed, we do not think it is necessary or appropriate for staff to have to accommodate the public while performing this work.

Comment on section 6, paragraphs 2, 3.A and 3.B:

The commenter suggested eliminating some redundant language on re-sealing ballots and memory devices after they are processed, and consolidating those provisions in a separate section.

Response:

We agree and have consolidated the redundant language into one new section of the rule, section 6.3.D.

Comment on section 6.3.C:

The commenter asked for an explanation of the process for verifying the digital cast vote record for the ballots that could not be scanned, and suggested that perhaps there should be a way for the campaigns and/or the public to inspect or audit that digital record.

Response:

For the RCV count at the June 2018 primary election, we employed a two-person process for manually creating and entering the cast vote records from the ballots that could not be scanned. We have changed this section of the rule to specify that the cast vote record spreadsheet will be created and proofread by two people.

With regard to the second part of the comment, we believe that public auditing or inspecting the manually-created cast vote record can be done as part of a recount.

Comment on section 6.4:

The commenter urges that, as soon as the RCV count is complete and official results have been announced, the Secretary of State should publish a digital copy of the complete cast vote record for each contest, and should stipulate this in the rule.

Response:

We have changed this section of the rule to specify that the Secretary of State will publish the digital cast vote records on the web site as soon as possible after completing the RCV count.

Rule-Making Fact Sheet

(5 MRSA §8057-A)

AGENCY: **29-250**
DEPARTMENT OF THE SECRETARY OF STATE
BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS
DIVISION OF ELECTIONS

NAME, ADDRESS, PHONE NUMBER, E-MAIL OF AGENCY CONTACT PERSON:

Julie L. Flynn
101 State House Station
Augusta, ME 04333-0101
Phone: 207-624-7736
Fax: 207-287-5428
Email: julie.flynn@maine.gov

CHAPTER NUMBER AND RULE TITLE: **Chapter 535: RULES GOVERNING THE ADMINISTRATION OF ELECTIONS DETERMINED BY RANKED-CHOICE VOTING**

STATUTORY AUTHORITY: **21-A M.R.S.A. §723-A, sub-§5-A**

DATE, TIME AND PLACE OF PUBLIC HEARING: September 17, 2018 at 1 P.M., Room 400 Burton Cross Building, 111 Sewall Street, Augusta, Maine

COMMENT DEADLINE: September 27, 2018

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]

Ranked-choice voting is a new method of conducting elections that did not exist in Maine law until this year. The governing statute, 21-A M.R.S.A. §723-A, does not provide sufficient detail to address how to administer elections by this method.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___YES _X_NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

This rule sets forth the procedures for requesting and conducting recounts of elections that are determined by the process of ranked-choice voting. It includes procedures for the collection, security and handling of ballots, the sorting and counting of first choice votes and subsequent rankings, and handling of disputed and challenged ballots.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]

In developing this rule, the Department relied on the extensive experience and expertise of its staff in administering elections at the state and municipal level. The Department reviewed and considered

recommendations submitted by the League of Women Voters for how to conduct recounts of ranked-choice voting contests. In addition, the Department drew on its experience implementing ranked-choice voting in the primary election on June 12, 2018, which was conducted in accordance with the emergency rule.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

The cost to implement this rule is estimated at $315,000 for any election with offices on the ballot that must be determined by ranked-choice voting, and where no candidate receives a majority of the first choice votes cast.

FOR EXISTING RULES WITH FISCAL IMPACT OF $1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS: [*see* §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [*see* §8057-A(2)(B)]

BENEFITS OF THE RULE: [*see* §8057-A(2)(C)]

Note: If necessary, additional pages may be used.

Administrative Procedure Act
CHECKLIST

Agency: **29-250**
DEPARTMENT OF THE SECRETARY OF STATE
BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS
DIVISION OF ELECTIONS

Chapter Number and Title of Rule:
Chapter 535: RULES GOVERNING THE ADMINISTRATION OF ELECTIONS DETERMINED BY RANKED-CHOICE VOTING

PROPOSED RULE:

1. Was this rule listed on the last regulatory agenda? Yes

2. Date of notification of: Anyone on mailing list: N/A

   Any trade, industry or professional group: N/A

   Any trade publications: N/A

3. Date Notice of Rulemaking Proposal (MAPA-3) sent to Secretary of State: N/A

4. Date Fact Sheet sent to Executive Director of Legislative Council: August 29, 2018

5. Date of publication in Secretary of State's rule-making ad.: August 29, 2018

6. Date of hearing(s): September 17, 2018 7. Comment deadline: September 27, 2018

ADOPTED RULE:

8. Was comment deadline extended or comment period reopened? No

   If yes, date of second notice publication in Secretary of State's rule-making ad: _____

9. Is adopted rule consistent with what was proposed? Changes were made in response to comments.
   (If not, please address the changes in the comments and responses section of your filing.)

10. Is the person signing the Certification Statement (MAPA-1, #9) authorized to do so as stated in your statutes or in 5 MRSA, c.71? Yes

11. Was the rule adopted within 120 days of the comment deadline? Yes

12. Was the rule approved and signed by the Office of the Attorney General within 150 days of the comment deadline? Yes

13. Is a Basis Statement included? Yes Is a copy of the Fact Sheet included? Yes

    Are comments, with names and organizations, and your responses included? Yes

Notice of Agency Rule-making Adoption

AGENCY: 29-250
DEPARTMENT OF THE SECRETARYOF STATE
BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS
DIVISION OF ELECTIONS

CHAPTER NUMBER AND TITLE:

Chapter 535: RULES GOVERNING THE ADMINISTRATION OF ELECTIONS DETERMINED BY RANKED-CHOICE VOTING

ADOPTED RULE NUMBER: **2018-230**

CONCISE SUMMARY: This rule sets forth the procedures for the administration of elections determined by ranked-choice voting, including the collection, security and handling of ballots and memory devices between the municipal offices and the central counting facility; aggregating and counting the cast vote records; administering the rounds of ranked-choice counting to achieve a result; and reporting the results.

EFFECTIVE DATE: **November 7, 2018**

AGENCY CONTACT PERSON: Julie L. Flynn, Deputy Secretary of State
AGENCY NAME: Bureau of Corporations, Elections and Commissions
ADDRESS: 101 State House Station
Augusta, ME 04333-0101
TELEPHONE: (207) 624-7736

BASIS STATEMENT:

Ranked-choice voting ("RCV") is a method of counting ballots and determining the outcome of election contests that applies when three or more candidates have qualified for the ballot and no candidate receives a majority of the first choice votes counted at the municipal level. It requires the collection of ballots or memory devices from all of the voting jurisdictions within an electoral district and processing at a central counting facility by staff of the Secretary of State's Office. The purpose of the rule is to detail procedures that are not adequately described in statute.