

**LD 321 An Act To Limit State Legislators to a Lifetime Total of 16 Years of Legislative Service**

To: Members, Joint Standing Committee on State and Local Government  
 From: Lynne Caswell, Esq., Legislative Analyst  
 Date: March 1, 2021

**SUMMARY**

This bill amends the Term Limitation Act of 1993 to limit Legislators to a cumulative lifetime limit of 8 terms in the Legislature (16 years) regardless of whether those terms are served in one chamber or both.

**TESTIMONY**

**Sponsor:** Representative Justin Fecteau - consecutive terms was not voters' expectation in 1993

**Proponents;** Rep. John Connor: written only: Susanna Richer

**Opponents:** League of Women Voters' of Maine by Penelope Hamblin; written only: former Representative Scott Strom

– long opposed to term limits; experience matters; elections are term limits; circumvents voters

**NFNA:** none

**INFORMATION REQUESTS****1. How many current legislators are beyond 16 years?**

130th Legislature			
Total # of Years Served*	# of Senators	# of Representatives	TOTAL #
> 16 yrs.	3	4	7
16 yrs.	2	4	6
14 yrs.	1	4	5
12 yrs.	6	2	8
10 yrs.	4	4	8
8 yrs.	6	33	39
< 8 yrs.	10	101	111
	N=32	N=152	N = 184

129 <sup>TH</sup> Legislature <i>not currently a member of 130th</i>			
Total # of Years Served*	# of Senators	# of Representatives	TOTAL #

> 16 yrs.	0	0	0
16 yrs.	2	3	5
14 yrs.	0	0	0
12 yrs.	0	1	1
10 yrs.	3	3	6
8 yrs.	2	17	19
< 8 yrs.	3	17	20
	N=10	N=41	N = 51

\*Total number of years served includes years served in both the House and the Senate

## 2. *Court Opinions / Decisions on Term Limitation Act* (see Attachment A)

- a. Is a constitutional amended required to impose term limits?
  - April 26, 1993 Opinion of the Justices – “the limitations contained in L.D. 751 on the terms of office for secretary of state, treasurer, attorney general, representatives, and senators are within the legislative power, and if enacted, would be valid.”
  - Question Certified to SJC from 1<sup>st</sup> Circuit District Court: Supreme Judicial Court, Rudman, J., held that term limits could be enacted by legislation, including voter initiative, and did not require constitutional amendment
- b. Do consecutive term limits impermissibly infringe on constitutional right to free speech and association?
  - No impermissible infringement because SOM had legitimate regulatory interests.
- c. Will lifetime term limits impermissibly infringe on constitutional right to free speech and association?
  - No Maine decision; multiple other states have held lifetime term limits are permissible
- d. Which terms are counted?
  - Supreme Judicial Court, Rudman, J., held that: (1) term limits could be enacted by legislation, including voter initiative, and did not require constitutional amendment, and (2) specification as to what legislative terms were subject to term limits had to be interpreted as indication of when legislators with sufficient consecutive years of service would first be disqualified from holding state legislative office.
- e. Does this create a retroactive application? No cases have been filed claiming the 1993 statute c
  - No cases claimed retroactive application

### POTENTIAL ISSUES / TECHNICAL PROBLEMS

1. The last paragraph of §553 was the subject of litigation when first enacted (See Attachment B)

“This section applies to terms of office that begin on or after December 3, 1996.”

The issue decided by the court was whether past/current terms are counted toward the limit. Or whether the count starts with terms served after the effective date of the statute. In deciding that past/current terms are counted, the SJC relied on the Transitional Statement included in the referendum sent to the voters on November 2, 1993 and the Attorney General’s explanatory statement attached to the referendum question pursuant to Title 1, section 353.

**FISCAL IMPACT - Preliminary (OFPR)**

None provided as of this date

**List of 9 Notes of Decisions for § 553. Limitations on terms**

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**Validity**

Challengers to Maine's Term Limitation Act, which limited certain state officials to a certain number of consecutive terms, failed to establish that burden that Act imposed on their First and Fourteenth Amendment rights to free speech and association rose to level of strict scrutiny, and thus state was only required to assert an important regulatory interest to justify Act's restrictions; Act was not content based, and Act did not establish a lifetime ban on incumbents. [League of Women Voters v. Diamond, D.Me.1996, 923 F.Supp. 266](#) , affirmed [82 F.3d 546](#) , on remand [965 F.Supp. 96](#) . [Constitutional Law 1476](#) ; [Constitutional Law 1680](#)

Legitimate and important regulatory interests of Maine's Term Limitation Act, which limited certain state officials to a certain number of consecutive terms, likely outweighed asserted injury to voters' and officials' First and Fourteenth Amendment rights to free speech and association; state's purported interests included reducing unfair advantages enjoyed by incumbents at the polls, promoting fairer and more competitive elections, encouraging qualified new candidates to run for public office, dislodging entrenched political leadership, curbing power of political machines, and encouraging election of citizen representatives instead of career politicians intent on their own reelection. [League of Women Voters v. Diamond, D.Me.1996, 923 F.Supp. 266](#) , affirmed [82 F.3d 546](#) , on remand [965 F.Supp. 96](#) . [Constitutional Law 1476](#) ; [Constitutional Law 1680](#) ; [Public Employment 148](#) ; [States 51](#)

Maine's Term Limitation Act, which limited certain state officials to a certain number of consecutive terms, did not likely impermissibly add qualifications for office to those established in Maine Constitution. [League of Women Voters v. Diamond, D.Me.1996, 923 F.Supp. 266](#) , affirmed [82 F.3d 546](#) , on remand [965 F.Supp. 96](#) . [Public Employment 148](#) ; [States 51](#)

Maine Term Limitation Act, which limited various state officials to four consecutive terms, was neither content based nor impermissibly restrictive, and thus would be subjected to rational basis test rather than strict scrutiny in challenge under First and Fourteenth Amendments. [League of Women Voters v. Diamond, D.Me.1997, 965 F.Supp. 96](#) . [Constitutional Law 1476](#) ; [Constitutional Law 4174](#) ; [Public Employment 148](#) ; [States 51](#)

State of Maine's legitimate regulatory interests supporting Maine Term Limitation Act outweighed any burden on incumbents' First and Fourteenth Amendment rights, and Act thus did not violate those Amendments, where State asserted six interests including reduction of incumbents' unfair advantage, promoting fairer and more competitive elections, and encouraging qualified new candidates to run for office. [League of Women Voters v. Diamond, D.Me.1997, 965 F.Supp. 96](#) . [Constitutional Law 1476](#) ; [Constitutional Law 4174](#) ; [Public Employment 148](#) ; [States 51](#)

**Construction of law**

In Maine's Term Limitation Act, which provided for limitations on consecutive number of terms that certain state officials could serve, provision indicating that Act applied "to terms of office that begin on or after" a certain date simply indicated that qualification imposed by Act began on or after that date, rather than meaning that incumbents did not begin accruing terms toward limitations until after that date. [League of Women Voters v. Diamond, D.Me.1996, 923 F.Supp. 266](#) , affirmed [82 F.3d 546](#) , on remand [965 F.Supp. 96](#) . [Public Employment 148](#) ; [States 51](#)

Language in term limit legislation adopted by voter initiative, that legislation would apply "to terms of office that began on or after" date specified, had to be interpreted in accordance with explanation of the Attorney General and transition statement made available to voters at time initiative was passed, as specifying date when legislators with sufficient consecutive years of service would first be disqualified from holding state legislative office, and not as specifying date from which potentially disqualifying terms would first begin to

be counted. [League of Women Voters v. Secretary of State \(1996\) Me., 683 A.2d 769](#) , answer to certified question conformed to [965 F.Supp. 96](#) . [Public Employment 148](#) ; [States 51](#)

### **Injunctive relief**

State legislators challenging validity of term limitations imposed by state failed to demonstrate probability of success on merits of their federal claims, and were not entitled to preliminary and injunctive relief to preclude enforcement of term limitation, having demonstrated nothing as to the equities that would warrant contrary result. [League of Women Voters of Maine v. Diamond, C.A.1 \(Me.\)1996, 82 F.3d 546](#) , on remand [965 F.Supp. 96](#) . [Injunction 1254](#)

Voters and state officials were not entitled to preliminary injunction against implementation of Maine's Term Limitation Act, which limited certain state officials to a certain consecutive number of terms; plaintiffs failed to establish that Act likely imposed an overly severe burden on First and Fourteenth Amendment rights, plaintiffs failed to demonstrate irreparable harm, and state demonstrated significant potential harm. [League of Women Voters v. Diamond, D.Me.1996, 923 F.Supp. 266](#) , affirmed [82 F.3d 546](#) , on remand [965 F.Supp. 96](#) . [Injunction 1254](#)

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**Title 21-A****§551. Short title**

This chapter may be known and cited as the "Term Limitation Act of 1993."

**§552. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Responsible electoral official.** "Responsible electoral official" means a public official who is responsible for accepting a nomination or nomination petition for an elected office and also means a public official who is responsible for placing the name of a person nominated for public office on a ballot, ballot label, calendar or other similar instrument.

**2. Term.** "Term" means a full term or any portion of a term served by an elected official in an office subject to the provisions of this chapter.

**§553. Limitations on terms**

Notwithstanding any other provision of law, consecutive terms in office are limited as follows.

**1. State Senate.** A person may not serve more than 4 consecutive terms as a state Senator.

**2. State Representative.** A person may not serve more than 4 consecutive terms as a member of the state House of Representatives.

**2-A. Legislators; cumulative terms.** A person may not serve more than 8 cumulative terms as a Legislator regardless of whether the terms served are in one House of the Legislature or both.

**3. Secretary of State.** A person may not serve more than 4 consecutive terms as Secretary of State.

**4. Treasurer of State.** A person may not serve more than 4 consecutive terms as Treasurer of State.

**5. Attorney General.** A person may not serve more than 4 consecutive terms as Attorney General.

**6. State Auditor.** A person may not serve more than 2 consecutive terms as State Auditor.

~~This~~ Except for subsection 2-A, this section applies to terms of office that begin on or after December 3, 1996.

**§554. Exclusion from nomination, election and service**

Notwithstanding any other provision of law, a person who is prohibited from service in an office as set forth in section 553 may not be nominated for or elected to that office. A responsible electoral official may not accept or certify such a person's nomination or nomination petition for an office subject to this chapter. A responsible electoral official may not print or cause to be printed such a person's name on a ballot, ballot label, calendar or other similar instrument for election to an office subject to this chapter. This section applies to nominations occurring and ballots printed after January 1, 1996.

**Unallocated Language**

Transition. Notwithstanding the Maine Revised Statutes, Title 21-A, section 553, subsection 2-A, a person serving in the 130<sup>th</sup> Legislature who has served more than 8 cumulative terms may continue to serve through the end of the 130<sup>th</sup> Legislature.