

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
SENATE  
115TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 930, L.D. 2385, Bill, "An Act to Amend the Process for Collecting for Costs of Services of the Maine Labor Relations Board, the Panel of Mediators and the State Board of Arbitration and Conciliation"

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

Sec. 1. 13 MRSA §1958-B, sub-§1, as amended by PL 1991, c. 622, Pt. O, §1, is further amended to read:

1. **Voluntary mediation.** At any time prior to the commencement of required mediation under subsection 2, a handler and a qualified association may mutually agree to obtain or may unilaterally obtain the services of a mediator. Regardless whether mediation is sought mutually or unilaterally, both parties shall participate in mediation in good faith. The parties must use the services of the State's Panel of Mediators for mediation and must share all costs of mediation equally. Costs of mediation, and any applicable state cost allocation program charges must be paid into a special fund administered by the Maine Labor Relations Board. The Executive Director of the Maine Labor Relations Board shall authorize mediation services and expenditures incurred by members of the panel. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice

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2 together with a penalty in the amount of 25% of the amount of the  
3 invoice. Any penalty amount collected pursuant to this provision  
4 remains in the special fund administered by the Maine Labor  
5 Relations Board and that fund does not lapse. The executive  
6 director is authorized to collect any sums due and payable  
7 pursuant to this provision through civil action. In such an  
8 action, the court shall allow litigation costs, including court  
9 costs and reasonable attorney's fees, to be deposited in the  
10 General Fund if the executive director is the prevailing party in  
11 the action. Voluntary mediation may not last for more than 3  
12 days for annual crops; voluntary mediation for all other  
13 commodities may not last more than 5 days. Mediation may be  
14 extended by mutual agreement by the bargaining parties.

15           **Sec. 2. 26 MRSA §892**, as amended by PL 1991, c. 622, Pt. O,  
16 **§2**, is further amended to read:

17 **§892. Panel**

18           ~~A panel of mediators~~ The Panel of Mediators, as established  
19 by Title 5, section 12004-B, subsection 3, ~~to consist~~ consisting  
20 of not less than 5 nor more than 10 impartial members, must be  
21 appointed by the Governor from time to time upon the expiration  
22 of the terms of the several members, for terms of 3 years. The  
23 Maine Labor Relations Board shall supply to the Governor  
24 nominations for filling vacancies. Vacancies occurring during a  
25 term are must be filled for the unexpired term. Members of the  
26 panel are entitled to compensation according to Title 5, chapter  
27 379. The costs for services rendered and expenses incurred by the  
28 panel, and any applicable state cost allocation program charges,  
29 must be shared equally by the parties to mediation and must be  
30 paid into a special fund administered by the Maine Labor  
31 Relations Board. Authorization for services rendered and  
32 expenditures incurred by members of the panel is the  
33 responsibility of the Executive Director of the Maine Labor  
34 Relations Board. All costs must be paid from that special fund.  
35 The executive director may estimate costs upon receipt of a  
36 request for services and collect those costs prior to providing  
37 the services. The executive director shall bill or reimburse the  
38 parties, as appropriate, for any difference between the estimated  
39 costs that were collected and the actual costs of providing the  
40 services. Once one party has paid its share of the estimated  
41 cost of providing the service, the mediator is assigned. A party  
42 who has not paid an invoice for the estimated or actual cost of  
43 providing services within 60 days of the date the invoice was  
44 issued is, in the absence of good cause shown, liable for the  
45 amount of the invoice together with a penalty in the amount of  
46 25% of the amount of the invoice. Any penalty amount collected  
47 pursuant to this provision remains in the special fund  
48 administered by the Maine Labor Relations Board and that fund  
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2 does not lapse. The executive director is authorized to collect  
3 any sums due and payable pursuant to this provision through civil  
4 action. In such an action, the court shall allow litigation  
5 costs, including court costs and reasonable attorney's fees, to  
6 be deposited in the General Fund if the executive director is the  
7 prevailing party in the action.

8 **Sec. 3. 26 MRSA §931, first ¶**, as amended by PL 1991, c. 622,  
9 Pt. O, §3, is further amended to read:

10 The State Board of Arbitration and Conciliation, in this  
11 subchapter called the "board," consists of 3 members appointed by  
12 the Governor from time to time upon the expiration of the terms  
13 of the several members, for terms of 3 years. One member is must  
14 be an employer of labor or selected from some association  
15 representing employers of labor, and another is must be an  
16 employee or selected from some bona fide trade or labor union.  
17 The 3rd member represents must represent the public interests of  
18 the State and shall-serve serves as chair. Vacancies occurring  
19 during a term must be filled for the unexpired term. Members of  
20 the board are entitled to receive \$75 a day for their services  
21 for the time actually employed in the discharge of their official  
22 duties. They are entitled to receive their traveling and all  
23 other necessary expenses. The costs for services rendered and  
24 expenses incurred by the State Board of Arbitration and  
25 Conciliation, and any state allocation program charges, must be  
26 shared equally by the parties to the proceedings and must be paid  
27 into a special fund administered by the Maine Labor Relations  
28 Board. Authorization for services rendered and expenditures  
29 incurred by the State Board of Arbitration and Conciliation is  
30 the responsibility of the Executive Director of the Maine Labor  
31 Relations Board. All costs must be paid from that special fund.  
32 The executive director may estimate costs upon receipt of a  
33 request for services and collect those costs prior to providing  
34 the services. The executive director shall bill or reimburse the  
35 parties, as appropriate, for any difference between the estimated  
36 costs that were collected and the actual costs of providing the  
37 services. Once one party has paid its share of the estimated  
38 cost of providing the service, the matter is scheduled for  
39 hearing. A party who has not paid an invoice for the estimated  
40 or actual cost of providing services within 60 days of the date  
41 the invoice was issued is, in the absence of good cause shown,  
42 liable for the amount of the invoice together with a penalty in  
43 the amount of 25% of the amount of the invoice. Any penalty  
44 amount collected pursuant to this provision remains in the  
45 special fund administered by the Maine Labor Relations Board and  
46 that fund does not lapse. The executive director is authorized  
47 to collect any sums due and payable pursuant to this provision  
48 through civil action. In such an action, the court shall allow  
49 litigation costs, including court costs and reasonable attorney's  
50 fees.

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2 fees, to be deposited in the General Fund if the executive  
3 director is the prevailing party in the action. The Executive  
4 Director executive director shall, annually, on or before July  
5 1st, make a report of the activities of the State Board of  
6 Arbitration and Conciliation to the Governor. The board shall  
7 from time to time adopt rules of procedure as it determines  
8 necessary.

9  
10 **Sec. 4. 26 MRSA §965, sub-§2, ¶C, as amended by PL 1991, c.**  
11 **622, Pt. O, §4, is further amended to read:**

12 C. ~~A panel of mediators~~ The Panel of Mediators, ~~to consist~~  
13 consisting of not less than 5 nor more than 10 impartial  
14 members, must be appointed by the Governor from time to time  
15 upon the expiration of the terms of the several members, for  
16 terms of 3 years. The Maine Labor Relations Board shall  
17 supply to the Governor nominations for filling vacancies.  
18 Vacancies occurring during a term ~~are~~ must be filled for the  
19 unexpired term. Members of the panel are entitled to \$100 a  
20 day beginning July 1, 1988, for services for the time  
21 actually employed in the discharge of their official duties  
22 and also are entitled to traveling and all other necessary  
23 expenses. The costs for services rendered and expenses  
24 incurred by members of the panel ~~of mediators~~ and any state  
25 cost allocation program charges must be shared equally by  
26 the parties to the proceedings and must be paid into a  
27 special fund administered by the Maine Labor Relations  
28 Board. Authorization for services rendered and expenditures  
29 incurred by members of the panel is the responsibility of  
30 the Executive Director of the Maine Labor Relations Board.  
31 All costs must be paid from that special fund. The  
32 executive director may estimate costs upon receipt of a  
33 request for services and collect those costs prior to  
34 providing the services. The executive director shall bill  
35 or reimburse the parties, as appropriate, for any difference  
36 between the estimated costs that were collected and the  
37 actual costs of providing the services. Once one party has  
38 paid its share of the estimated cost of providing the  
39 service, the mediator is assigned. A party who has not paid  
40 an invoice for the estimated or actual cost of providing  
41 services within 60 days of the date the invoice was issued  
42 is, in the absence of good cause shown, liable for the  
43 amount of the invoice together with a penalty in the amount  
44 of 25% of the amount of the invoice. Any penalty amount  
45 collected pursuant to this provision remains in the special  
46 fund administered by the Maine Labor Relations Board and  
47 that fund does not lapse. The executive director is  
48 authorized to collect any sums due and payable pursuant to  
49 this provision through civil action. In such an action, the  
50 court shall allow litigation costs, including court costs

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2 and reasonable attorney's fees, to be deposited in the  
3 General Fund if the executive director is the prevailing  
4 party in the action.

5 **Sec. 5. 26 MRSA §965, sub-§6,** as amended by PL 1991, c. 622,  
6 Pt. O, §6, is further amended to read:

7 **6. Arbitration administration.** The cost for services  
8 rendered and expenses incurred by the Maine State Board of  
9 Arbitration and Conciliation, as defined in section 931, and any  
10 state cost allocation program charges, must be shared equally by  
11 the parties to the proceedings and must be paid into a special  
12 fund administered by the Maine Labor Relations Board.  
13 Authorization for services rendered and expenditures incurred by  
14 members of the State Board of Arbitration and Conciliation is the  
15 responsibility of the executive director. All costs must be paid  
16 from that special fund. The executive director may estimate  
17 costs upon receipt of a request for services and collect those  
18 costs prior to providing the services. The executive director  
19 shall bill or reimburse the parties, as appropriate, for any  
20 difference between the estimated costs that were collected and  
21 the actual costs of providing the services. Once one party has  
22 paid its share of the estimated cost of providing the service,  
23 the matter is scheduled for hearing. A party who has not paid an  
24 invoice for the estimated or actual cost of providing services  
25 within 60 days of the date the invoice was issued is, in the  
26 absence of good cause shown, liable for the amount of the invoice  
27 together with a penalty in the amount of 25% of the amount of the  
28 invoice. Any penalty amount collected pursuant to this provision  
29 remains in the special fund administered by the Maine Labor  
30 Relations Board and that fund does not lapse. The executive  
31 director is authorized to collect any sums due and payable  
32 pursuant to this provision through civil action. In such an  
33 action, the court shall allow litigation costs, including court  
34 costs and reasonable attorney's fees, to be deposited in the  
35 General Fund if the executive director is the prevailing party in  
36 the action.

37 **Sec. 6. 26 MRSA §968, sub-§1,** as amended by PL 1991, c. 622,  
38 Pt. O, §8, is further amended to read:

39 **1. Maine Labor Relations Board.** The Maine Labor Relations  
40 Board, established by Title 5, section 12004-B, subsection 2,  
41 consists of 3 members and 6 alternates to be appointed by the  
42 Governor, subject to review by the joint standing committee of  
43 the Legislature having jurisdiction over labor matters and to  
44 confirmation by the Legislature. The Governor, in making  
45 appointments, shall name one member and 2 alternates to represent  
46 employees, one member and 2 alternates to represent employers and  
47 one member and 2 alternates to represent the public. The member  
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2 representing the public shall--be serves as the board's chair and  
the alternate representing the public shall--be serves as an  
4 alternate chair. Members of the board are entitled to  
compensation according to the provisions of Title 5, chapter 379.  
6 The alternates are entitled to compensation at the same per diem  
rate as the member that the alternate replaces. The term of each  
8 member and each alternate is 4 years, ~~provided~~, except that of  
the members and alternates first appointed, one member and 2  
10 alternates are appointed for a term of 4 years, one member and 2  
alternates are appointed for a term of 3 years and one member and  
12 2 alternates are appointed for a term of 2 years. The members of  
the board, its alternates and its employees are entitled to  
14 receive necessary expenses. Per diem and necessary expenses for  
members and alternates of the board, as well as state cost  
16 allocation program charges, must be shared equally by the parties  
to any proceeding at which the board presides, and must be paid  
18 into a special fund administered by the board from which all  
costs must be paid. The executive director may estimate costs  
upon receipt of a request for services and collect those costs  
prior to providing the services. The executive director shall  
bill or reimburse the parties, as appropriate, for any difference  
between the estimated costs that were collected and the actual  
costs of providing the services. Once one party has paid its  
share of the estimated cost of providing the service, the matter  
is scheduled for hearing. A party who has not paid an invoice  
for the estimated or actual cost of providing services within 60  
days of the date the invoice was issued is, in the absence of  
good cause shown, liable for the amount of the invoice together  
with a penalty in the amount of 25% of the amount of the  
invoice. Any penalty amount collected pursuant to this provision  
remains in the special fund administered by the Maine Labor  
Relations Board and that fund does not lapse. The executive  
director is authorized to collect any sums due and payable  
pursuant to this provision through civil action. In such an  
action, the court shall allow litigation costs, including court  
costs and reasonable attorney's fees, to be deposited in the  
General Fund if the executive director is the prevailing party in  
the action. At its discretion, the board may allocate all costs  
to a party that presents a frivolous complaint or defense or that  
commits a blatant violation of the applicable collective  
bargaining law. When the board meets on administrative or other  
matters that do not concern the interests of particular parties  
or when any board member presides at a prehearing conference, the  
members' per diem and necessary expenses must be paid from the  
board's regular appropriation for these purposes. The executive  
director and legal or professional personnel employed by the  
board are members of the unclassified service.

48 Sec. 7. 26 MRSA §1026, sub-§5, as amended by PL 1991, c. 622,  
50 Pt. O, §11, is further amended to read:

2           **5. Costs.** The following costs must be shared equally by  
3 the parties to the proceedings: the costs of the fact-finding  
4 board, including, if any, per diem expenses and actual and  
5 necessary travel and subsistence expenses and; the costs of the  
6 neutral arbitrator or arbitrators, including, if any, per diem  
7 expenses and actual and necessary travel and subsistence  
8 expenses; the costs of the Federal Mediation and Conciliation  
9 Service or the American Arbitration Association; and the costs of  
10 hiring the premises where any fact-finding or arbitration  
11 proceedings are conducted. All other costs must be assumed by the  
12 party incurring them. The services of the Panel of Mediators and  
13 the Maine State Board of Arbitration and Conciliation, and any  
14 state allocation program charges, must be shared equally by the  
15 parties to the proceedings and must be paid into a special fund  
16 administered by the Maine Labor Relations Board. Authorization  
17 for services rendered and expenditures incurred by members of the  
18 Panel of Mediators and the State Board of Arbitration and  
19 Conciliation is the responsibility of the executive director.  
20 All costs must be paid from that special fund. The executive  
21 director may estimate costs upon receipt of a request for  
22 services and collect those costs prior to providing the  
23 services. The executive director shall bill or reimburse the  
24 parties, as appropriate, for any difference between the estimated  
25 costs that were collected and the actual costs of providing the  
26 services. Once one party has paid its share of the estimated  
27 cost of providing the service, the matter is scheduled for  
28 hearing or the mediator is assigned. A party who has not paid an  
29 invoice for the estimated or actual cost of providing services  
30 within 60 days of the date the invoice was issued is, in the  
31 absence of good cause shown, liable for the amount of the invoice  
32 together with a penalty in the amount of 25% of the amount of the  
33 invoice. Any penalty amount collected pursuant to this provision  
34 remains in the special fund administered by the Maine Labor  
35 Relations Board and that fund does not lapse. The executive  
36 director is authorized to collect any sums due and payable  
37 pursuant to this provision through civil action. In such an  
38 action, the court shall allow litigation costs, including court  
39 costs and reasonable attorney's fees, to be deposited in the  
40 General Fund if the executive director is the prevailing party in  
41 the action.

42           **Sec. 8. 26 MRSA §1285, sub-§8,** as amended by PL 1991, c. 622,  
43 Pt. O, §13, is further amended to read:

44           **8. Arbitration administration.** The cost of services  
45 rendered and expenses incurred by the State Board of Arbitration  
46 and Conciliation, as defined in section 931, and any applicable  
47 state cost allocation program charges, must be shared equally by  
48 the parties to the proceedings and must be paid into a special  
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2 fund administered by the Maine Labor Relations Board.  
3 Authorization for services rendered and expenditures incurred by  
4 members of the State Board of Arbitration and Conciliation is the  
5 responsibility of the executive director. All costs must be paid  
6 from that special fund. The executive director may estimate  
7 costs upon receipt of a request for services and collect those  
8 costs prior to providing the services. The executive director  
9 shall bill or reimburse the parties, as appropriate, for any  
10 difference between the estimated costs that were collected and  
11 the actual costs of providing the services. Once one party has  
12 paid its share of the estimated cost of providing the service,  
13 the matter is scheduled for hearing. A party who has not paid an  
14 invoice for the estimated or actual cost of providing services  
15 within 60 days of the date the invoice was issued is, in the  
16 absence of good cause shown, liable for the amount of the invoice  
17 together with a penalty in the amount of 25% of the amount of the  
18 invoice. Any penalty amount collected pursuant to this provision  
19 remains in the special fund administered by the Maine Labor  
20 Relations Board and that fund does not lapse. The executive  
21 director is authorized to collect any sums due and payable  
22 pursuant to this provision through civil action. In such an  
23 action, the court shall allow litigation costs, including court  
24 costs and reasonable attorney's fees, to be deposited in the  
25 General Fund if the executive director is the prevailing party in  
26 the action.'

27 Further amend the bill by inserting at the end before the  
28 statement of fact the following:

29 **FISCAL NOTE**

30 Authorizing the Maine Labor Relations Board to bill for  
31 services in advance of providing those services will have no net  
32 fiscal impact, but will change the cash flow pattern of the  
33 board's dedicated revenue. The board's General Fund account  
34 contains sufficient funds to pay members per diem and expenses  
35 when they meet only for administrative purposes.

36 The bill additionally allows the executive director to  
37 collect amounts due through civil action. The additional  
38 workload and administrative costs associated with the minimal  
39 number of new cases filed in the court system can be absorbed  
40 within the budgeted resources of the Judicial Department.

41 The collection of litigation costs through civil action may  
42 increase General Fund revenue. The amount can not be determined  
43 at this time.'

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**STATEMENT OF FACT**

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4 The original bill authorizes the Executive Director of the  
6 Maine Labor Relations Board to estimate and collect costs prior  
8 to providing certain services for which, under Public Law 1991,  
10 chapter 622, the parties must now pay. This amendment adds to  
12 the changes in the original bill by adding a provision to ensure  
14 that there will be no delay in the provision of services if one  
16 party fails to pay for the estimated costs of those services.  
18 The amendment also imposes a penalty of 25% of the amount of the  
20 invoice if a party, in the absence of good cause, fails to pay  
the invoice amount within 60 days. Any penalties collected  
remain in the special fund set up by Public Law 1991, chapter 622  
to pay for those services, and that fund does not lapse. The  
amendment also authorizes the Executive Director of the Maine  
Labor Relations Board to collect any sums due pursuant to these  
changes through civil action. If the executive director  
prevails, the court shall award litigation costs, including  
reasonable attorney's fees, to be deposited in the General Fund.  
The amendment also adds a fiscal note.

Reported by Senator Conley for the Committee on Labor.  
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