

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1992

Legislative Document

No. 2385

S.P. 930

In Senate, February 27, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.  
Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator ESTY of Cumberland

Cosponsored by Senator CONLEY of Cumberland, Representative LIPMAN of Augusta and Representative REED of Falmouth.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-TWO

**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.**

(AFTER DEADLINE)

(EMERGENCY)

Printed on recycled paper



2           **Emergency preamble.** Whereas, Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

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6           Whereas, the 90-day period will not terminate until at least  
July 15, 1992; and

8           Whereas, the Maine Labor Relations Board is faced with an  
immediate problem of being unable to make timely payments for  
10 services provided by members of the board, the Panel of Mediators  
and the State Board of Arbitration and Conciliation and  
12 clarification is necessary as to whether the Executive Director  
of the Maine Labor Relations Board is authorized to estimate and  
14 collect the costs of these services from the parties using them  
prior to delivery of the services; and

16  
18           Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
20 necessary for the preservation of the public peace, health and  
safety; now, therefore,

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

24           **Sec. 1. 13 MRSA §1958-B, sub-§1, as amended by PL 1991, c.**  
26           **622, Pt. O, §1, is further amended to read:**

28           **1. Voluntary mediation.** At any time prior to the  
commencement of required mediation under subsection 2, a handler  
30 and a qualified association may mutually agree to obtain or may  
unilaterally obtain the services of a mediator. Regardless  
32 whether mediation is sought mutually or unilaterally, both  
parties shall participate in mediation in good faith. The  
34 parties must use the services of the State's Panel of Mediators  
for mediation and must share all costs of mediation equally.  
36 Costs of mediation, and any applicable state cost allocation  
program charges must be paid into a special fund administered by  
38 the Maine Labor Relations Board. The Executive Director of the  
Maine Labor Relations Board shall authorize mediation services  
40 and expenditures incurred by members of the panel. All costs  
must be paid from that special fund. The executive director may  
42 estimate costs upon receipt of a request for services and collect  
those costs prior to providing the services. Parties must be  
44 billed for costs actually incurred beyond the estimate or  
reimbursed for overpayments made. Voluntary mediation may not  
46 last for more than 3 days for annual crops; voluntary mediation  
for all other commodities may not last more than 5 days.  
48 Mediation may be extended by mutual agreement by the bargaining  
parties.

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

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6           **§892. Panel**

8           ~~A-panel-of-mediators~~ The Panel of Mediators, as established  
10 by Title 5, section 12004-B, subsection 3, ~~to-consist~~ consisting  
of not less than 5 nor more than 10 impartial members, must be  
12 appointed by the Governor from time to time upon the expiration  
of the terms of the several members, for terms of 3 years. The  
14 Maine Labor Relations Board shall supply to the Governor  
nominations for filling vacancies. Vacancies occurring during a  
16 term ~~are~~ must be filled for the unexpired term. Members of the  
panel are entitled to compensation according to Title 5, chapter  
18 379. The costs for services rendered and expenses incurred by  
the panel, and any applicable state cost allocation program  
20 charges, must be shared equally by the parties to mediation and  
must be paid into a special fund administered by the Maine Labor  
22 Relations Board. Authorization for services rendered and  
expenditures incurred by members of the panel is the  
24 responsibility of the Executive Director of the Maine Labor  
Relations Board. All costs must be paid from that special fund.  
26 The executive director may estimate costs upon receipt of a  
request for services and collect those costs prior to providing  
the services. Parties must be billed for costs actually incurred  
beyond the estimate or reimbursed for overpayments made.

28  
30           **Sec. 3. 26 MRSA §931, first ¶**, as amended by PL 1991, c. 622,  
Pt. O, §3, is further amended to read:

32           The State Board of Arbitration and Conciliation, in this  
34 subchapter called the "board," consists of 3 members appointed by  
the Governor from time to time upon the expiration of the terms  
of the several members, for terms of 3 years. One member ~~is~~ must  
36 be an employer of labor or selected from some association  
representing employers of labor, and another ~~is~~ must be an  
38 employee or selected from some bona fide trade or labor union.  
The 3rd member ~~represents~~ must represent the public interests of  
40 the State and ~~shall-serve~~ serves as chair. Vacancies occurring  
during a term must be filled for the unexpired term. Members of  
42 the board are entitled to receive \$75 a day for their services  
for the time actually employed in the discharge of their official  
44 duties. They are entitled to receive their traveling and all  
other necessary expenses. The costs for services rendered and  
46 expenses incurred by the State Board of Arbitration and  
Conciliation, and any state allocation program charges, must be  
48 shared equally by the parties to the proceedings and must be paid  
into a special fund administered by the Maine Labor Relations  
50 Board. Authorization for services rendered and expenditures

2 incurred by the State Board of Arbitration and Conciliation is  
3 the responsibility of the Executive Director of the Maine Labor  
4 Relations Board. All costs must be paid from that special fund.  
5 The executive director may estimate costs upon receipt of a  
6 request for services and collect those costs prior to providing  
7 the services. Parties must be billed for costs actually incurred  
8 beyond the estimate or reimbursed for overpayments made. The  
9 ~~Executive--Director~~ executive director shall, annually, on or  
10 before July 1st, make a report of the activities of the State  
11 Board of Arbitration and Conciliation to the Governor. The board  
12 shall from time to time adopt rules of procedure as it determines  
13 necessary.

14 **Sec. 4. 26 MRSA §965, sub-§2, ¶C,** as amended by PL 1991, c.  
15 622, Pt. O, §4, is further amended to read:

16 C. ~~A panel of mediators~~ The Panel of Mediators, to consist  
17 consisting of not less than 5 nor more than 10 impartial  
18 members, must be appointed by the Governor from time to time  
19 upon the expiration of the terms of the several members, for  
20 terms of 3 years. The Maine Labor Relations Board shall  
21 supply to the Governor nominations for filling vacancies.  
22 Vacancies occurring during a term are must be filled for the  
23 unexpired term. Members of the panel are entitled to \$100 a  
24 day beginning July 1, 1988, for services for the time  
25 actually employed in the discharge of their official duties  
26 and also are entitled to traveling and all other necessary  
27 expenses. The costs for services rendered and expenses  
28 incurred by members of the panel ~~of mediators~~ and any state  
29 cost allocation program charges must be shared equally by  
30 the parties to the proceedings and must be paid into a  
31 special fund administered by the Maine Labor Relations  
32 Board. Authorization for services rendered and expenditures  
33 incurred by members of the panel is the responsibility of  
34 the Executive Director of the Maine Labor Relations Board.  
35 All costs must be paid from that special fund. The  
36 executive director may estimate costs upon receipt of a  
37 request for services and collect those costs prior to  
38 providing the services. Parties must be billed for costs  
39 actually incurred beyond the estimate or reimbursed for  
40 overpayments made.

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

43 **6. Arbitration administration.** The cost for services  
44 rendered and expenses incurred by the Maine State Board of  
45 Arbitration and Conciliation, as defined in section 931, and any  
46 state cost allocation program charges, must be shared equally by  
47 the parties to the proceedings and must be paid into a special  
48 fund.

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. Parties must be billed  
9 for costs actually incurred beyond the estimate or reimbursed for  
10 overpayments made.

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

13 **1. Maine Labor Relations Board.** The Maine Labor Relations  
14 Board, established by Title 5, section 12004-B, subsection 2,  
15 consists of 3 members and 6 alternates ~~to be~~ appointed by the  
16 Governor, subject to review by the joint standing committee of  
17 the Legislature having jurisdiction over labor matters and to  
18 confirmation by the Legislature. The Governor, in making  
19 appointments, shall name one member and 2 alternates to represent  
20 employees, one member and 2 alternates to represent employers and  
21 one member and 2 alternates to represent the public. The member  
22 representing the public shall ~~be~~ serve as the board's chair and  
23 the alternate representing the public shall ~~be~~ serve as an  
24 alternate chair. Members of the board are entitled to  
25 compensation according to the provisions of Title 5, chapter  
26 379. The alternates are entitled to compensation at the same per  
27 diem rate as the member that the alternate replaces. The term of  
28 each member and each alternate is 4 years, ~~provided, except that~~  
29 of the members and alternates first appointed, one member and 2  
30 alternates are appointed for a term of 4 years, one member and 2  
31 alternates are appointed for a term of 3 years and one member and  
32 2 alternates are appointed for a term of 2 years. The members of  
33 the board, its alternates and its employees are entitled to  
34 receive necessary expenses. Per diem and necessary expenses for  
35 members and alternates of the board, as well as state cost  
36 allocation program charges, must be shared equally by the parties  
37 to any proceeding at which the board presides, and must be paid  
38 into a special fund administered by the board from which all  
39 costs must be paid. The executive director may estimate costs  
40 upon receipt of a request for services and collect those costs  
41 prior to providing the services. Parties must be billed for  
42 costs actually incurred beyond the estimate or reimbursed for  
43 overpayments made. At its discretion, the board may allocate all  
44 costs to a party that presents a frivolous complaint or defense  
45 or that commits a blatant violation of the applicable collective  
46 bargaining law. When the board meets on administrative or other  
47 matters that do not concern the interests of particular parties  
48 or when any board member presides at a prehearing conference, the

2 members' per diem and necessary expenses must be paid from the  
3 board's regular appropriation for these purposes. The executive  
4 director and legal or professional personnel employed by the  
5 board are members of the unclassified service.

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

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9 **5. Costs.** The following costs must be shared equally by  
10 the parties to the proceedings: the costs of the fact-finding  
11 board, including, if any, per diem expenses and actual and  
12 necessary travel and subsistence expenses and the costs of the  
13 neutral arbitrator or arbitrators, including, if any, per diem  
14 expenses and actual and necessary travel and subsistence  
15 expenses; the costs of the Federal Mediation and Conciliation  
16 Service or the American Arbitration Association; and the costs of  
17 hiring the premises where any fact-finding or arbitration  
18 proceedings are conducted. All other costs must be assumed by  
19 the party incurring them. The services of the Panel of Mediators  
20 and the Maine State Board of Arbitration and Conciliation, and  
21 any state allocation program charges, must be shared equally by  
22 the parties to the proceedings and must be paid into a special  
23 fund administered by the Maine Labor Relations Board.  
24 Authorization for services rendered and expenditures incurred by  
25 members of the Panel of Mediators and the State Board of  
26 Arbitration and Conciliation is the responsibility of the  
27 executive director. All costs must be paid from that special  
28 fund. The executive director may estimate costs upon receipt of  
29 a request for services and collect those costs prior to providing  
30 the services. Parties must be billed for costs actually incurred  
31 beyond the estimate or reimbursed for overpayments made.

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

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36 **8. Arbitration administration.** The cost of services  
37 rendered and expenses incurred by the State Board of Arbitration  
38 and Conciliation, as defined in section 931, and any applicable  
39 state cost allocation program charges, must be shared equally by  
40 the parties to the proceedings and must be paid into a special  
41 fund administered by the Maine Labor Relations Board.  
42 Authorization for services rendered and expenditures incurred by  
43 members of the State Board of Arbitration and Conciliation is the  
44 responsibility of the executive director. All costs must be paid  
45 from that special fund. The executive director may estimate  
46 costs upon receipt of a request for services and collect those  
47 costs prior to providing the services. Parties must be billed  
48 for costs actually incurred beyond the estimate or reimbursed for  
overpayments made.

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**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

**STATEMENT OF FACT**

As a budget-cutting measure, Public Law 1991, chapter 622, Part O requires parties using certain services of the Maine Labor Relations Board, the Panel of Mediators and the State Board of Arbitration and Conciliation to pay for those services. The amount of time it will take for parties to pay their bills for services rendered is expected to vary significantly. To ensure that the members of the boards and the panel providing the services are paid in a timely manner, this bill clarifies that the Executive Director of the Maine Labor Relations Board is authorized to estimate and collect costs prior to providing the services. Once the services are provided, parties will either be billed for additional costs actually incurred or reimbursed for overpayments made.

This bill also clarifies that when the Maine Labor Relations 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, as is currently the practice, members' per diem and necessary expenses will be paid from the board's regular appropriation for these purposes.