

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1362, L.D. 1913, Bill, "An Act to Clarify the Confidentiality of Public Employee Information"

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

'Sec. 1. 5 MRSA §7070, sub-§2, ¶E, as amended by PL 1997, c. 124, §2, is further amended to read:

E. Except as provided in section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this paragraph, "final written decision" means:

- (1) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

COMMITTEE AMENDMENT

2 (2) If the final written administrative decision is
4 appealed to arbitration, the final written decision of
a neutral arbitrator.

6 A final written administrative decision that is appealed to
8 arbitration is no longer confidential 120 days after a
written request for the decision is made to the employer if
10 the final written decision of the neutral arbitrator is not
issued and released before the expiration of the 120 days;

12 **Sec. 2. 30-A MRSA §503, sub-§1, ¶B**, as amended by PL 1991, c.
14 229, §2, is further amended to read:

B. County records containing the following:

16 (1) Medical information of any kind, including
18 information pertaining to the diagnosis or treatment of
mental or emotional disorders;

20 (2) Performance evaluations and personal references
22 submitted in confidence;

24 (3) Information pertaining to the creditworthiness of
a named employee;

26 (4) Information pertaining to the personal history,
28 general character or conduct of members of an
employee's immediate family; and

30 (5) Complaints, charges or accusations of misconduct,
32 replies to those complaints, charges or accusations and
any other information or materials that may result in
34 disciplinary action. If disciplinary action is taken,
36 the final written decision relating to that action is
no longer confidential after the decision is completed
38 if it imposes or upholds discipline. If an arbitrator
completely overturns or removes disciplinary action
from an employee personnel file, the final written
decision is public except that the employee's name must
be deleted from the final written decision and kept
confidential. If the employee whose name was deleted
from the final written decision discloses that the
employee is the person who is the subject of the final
written decision, the entire final written report, with
regard to that employee, is public.

48 For purposes of this subparagraph, "final written
50 decision" means:

2 (a) The final written administrative decision
4 that is not appealed pursuant to a grievance
arbitration procedure; or

6 (b) If the final written administrative decision
8 is appealed to arbitration, the final written
decision of a neutral arbitrator.

10 A final written administrative decision that is
12 appealed to arbitration is no longer confidential 120
14 days after a written request for the decision is made
to the employer if the final written decision of the
neutral arbitrator is not issued and released before
the expiration of the 120 days; and

16 **Sec. 3. 30-A MRSA §2702, sub-§1, ¶B,** as amended by PL 1991, c.
18 229, §3, is further amended to read:

20 B. Municipal records pertaining to an identifiable employee
and containing the following:

22 (1) Medical information of any kind, including
24 information pertaining to diagnosis or treatment of
mental or emotional disorders;

26 (2) Performance evaluations and personal references
28 submitted in confidence;

30 (3) Information pertaining to the creditworthiness of
a named employee;

32 (4) Information pertaining to the personal history,
34 general character or conduct of members of an
employee's immediate family; and

36 (5) Complaints, charges or accusations of misconduct,
38 replies to those complaints, charges or accusations and
40 any other information or materials that may result in
42 disciplinary action. If disciplinary action is taken,
44 the final written decision relating to that action is
46 no longer confidential after the decision is completed
48 if it imposes or upholds discipline. The decision must
state the conduct or other facts on the basis of which
disciplinary action is being imposed and the
conclusions of the acting authority as to the reasons
for that action. If an arbitrator completely overturns
or removes disciplinary action from an employee
personnel file, the final written decision is public
except that the employee's name must be deleted from
50 the final written decision and kept confidential. If

2 the employee whose name was deleted from the final
3 written decision discloses that the employee is the
4 person who is the subject of the final written
5 decision, the entire final written report, with regard
6 to that employee, is public.

7 For purposes of this subparagraph, "final written
8 decision" means:

10 (a) The final written administrative decision
11 that is not appealed pursuant to a grievance
12 arbitration procedure; or

14 (b) If the final written administrative decision
15 is appealed to arbitration, the final written
16 decision of a neutral arbitrator.

18 A final written administrative decision that is
19 appealed to arbitration is no longer confidential 120
20 days after a written request for the decision is made
21 to the employer if the final written decision of the
22 neutral arbitrator is not issued and released before
23 the expiration of the 120 days; and'

24 Further amend the bill by inserting at the end before the
25 summary the following:

28 FISCAL NOTE

30 The requirement that municipalities and counties delete
31 references to an employee's name from certain files represents a
32 state mandate pursuant to the Constitution of Maine. The
33 additional local costs will be very minor. General Fund
34 appropriations will be required to fund at least 90% of the
35 additional costs unless a Mandate Preamble is amended to the bill
36 and two-thirds of the members of each House vote to exempt this
37 mandate from the funding requirement.'

40 SUMMARY

42 This amendment replaces the bill but retains the purpose of
43 the bill. It protects the privacy of public employees whose
44 discipline has been overturned by an arbitrator, overruling Doe
45 v. Department of Mental Health, Mental Retardation and Substance
46 Abuse Services, 1997 ME 195, 699 A.2d 422 (1997).

48 This amendment provides that the final written decision
50 governing a disciplinary action is no longer confidential once it

2 is completed if the decision imposes or upholds discipline. If a
3 disciplinary action is appealed to an arbitrator, the
4 arbitrator's decision is the final written decision. If the
5 arbitrator completely overturns or removes disciplinary action
6 from an employee's personnel file, the employee's name is
7 confidential and must be deleted from the final written decision
8 before it is released.

The amendment also adds a fiscal note to the bill.