

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1553

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S.P. 544

In Senate, April 27, 2017

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**An Act To Protect the Rights of Public Employees To Determine  
Their Collective Bargaining Agent**

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Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator CUSHING of Penobscot.  
Cosponsored by Representative WARD of Dedham and  
Senators: MASON of Androscoggin, President THIBODEAU of Waldo, VOLK of  
Cumberland, WHITTEMORE of Somerset, Representatives: ESPLING of New Gloucester,  
FREDETTE of Newport, SIROCKI of Scarborough, WINSOR of Norway.

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

2 **Sec. 1. 26 MRSA §967**, as amended by PL 1991, c. 622, Pt. O, §7, is further  
3 amended to read:

4 **§967. Determination of bargaining agent**

5 **1. Voluntary recognition.** Any public employee organization may file a request  
6 with a public employer alleging that a majority of the public employees in an appropriate  
7 bargaining unit wish to be represented for the purpose of collective bargaining between  
8 the public employer and the employees' organization. Such a request shall must describe  
9 the grouping of jobs or positions ~~which that~~ constitute the unit claimed to be appropriate  
10 and ~~shall must~~ include a demonstration of majority support. Such a request for  
11 recognition ~~shall must~~ be granted by the public employer, unless the public employer  
12 desires that an election determine whether the organization represents a majority of the  
13 members in the bargaining unit.

14 **2. Elections.** The executive director of the board, or a designee, upon the signed  
15 request of a public employer alleging that one or more public employees or public  
16 employee organizations have presented to it a claim to be recognized as the representative  
17 of a bargaining unit of public employees, ~~or~~ upon the signed petition of at least 30% of a  
18 bargaining unit of public employees that they desire to be represented by an organization  
19 or pursuant to a bargaining agent recertification required by subsection 3, shall conduct a  
20 secret ballot election to determine whether the organization represents a majority of the  
21 members in the bargaining unit. Such an election may be conducted at suitable work  
22 locations or through the United States mail, and the procedures adopted and employed  
23 must ensure that neither the employee organizations ~~or~~ nor the management  
24 representatives involved in the election have access to information that would identify a  
25 voter. Employees must be permitted to cast a ballot for a period of 7 days from the  
26 commencement of the election.

27 The ballot ~~shall must~~ contain the name of ~~such the~~ organization and that of any other  
28 organization showing written proof of at least 10% representation of the public  
29 employees within the unit, together with a choice for any public employee to designate  
30 that ~~he the employee~~ does not desire to be represented by any bargaining agent. ~~Where~~ If  
31 more than one organization is on the ballot and no one of the 3 or more choices receives a  
32 majority vote of the public employees voting, a run-off election ~~shall must~~ be held. The  
33 run-off ballot ~~shall must~~ contain the 2 choices ~~which that~~ received the largest and second-  
34 largest number of votes. When an organization receives the majority of votes of those  
35 voting, the executive director of the board shall certify it as the bargaining agent. The  
36 bargaining agent certified as representing a bargaining unit ~~shall must~~ be recognized by  
37 the public employer as the sole and exclusive bargaining agent for all of the employees in  
38 the bargaining unit unless and until a decertification election by secret ballot ~~shall be~~ is  
39 held and the bargaining agent declared by the executive director of the board as not  
40 representing a majority of the unit.

41 Whenever 30% of the employees in a certified bargaining unit petition for a bargaining  
42 agent to be decertified, the procedures for conducting an election on the question ~~shall be~~  
43 are the same as for representation as bargaining agent hereinbefore set forth.

1           **3. Recertification.** The executive director of the board or the director's designee  
2 shall periodically direct a secret ballot election to certify that a majority of the employees  
3 in a certified bargaining unit desire to be represented by the unit's currently certified  
4 bargaining agent. The recertification election must be conducted in accordance with  
5 subsection 2, except that a majority vote for purposes of a recertification election is a  
6 majority of all employees in the bargaining unit.

7 If the bargaining agent is not recertified by a majority vote of all employees in the  
8 bargaining unit, the executive director or the director's designee shall decertify the  
9 bargaining agent and the bargaining unit will not be represented by that bargaining agent.  
10 If the bargaining agent is decertified in accordance with this subsection, the terms of any  
11 collective bargaining agreement that are in effect between the bargaining unit represented  
12 by that bargaining agent and the employer remain in effect except as to dues, service fees,  
13 grievances, arbitration and any other provisions regarding the bargaining agent. The  
14 employees in a bargaining unit that has failed to recertify its bargaining agent pursuant to  
15 this subsection may certify a new bargaining agent pursuant to this section, except that,  
16 for a period of at least one year, the employees may not certify a new bargaining agent  
17 that is substantially similar to or affiliated with the previous bargaining agent.

18 The executive director or the director's designee shall commence recertification elections  
19 not less than 2 years and not more than 3 years after the effective date of this subsection  
20 and shall then subsequently commence recertification elections every even-numbered  
21 year. Recertification elections must be conducted no earlier than August 1st and no later  
22 than December 1st in any year in which they occur.

23           No question concerning representation may be raised within one year of a  
24 certification or attempted certification. ~~Where~~ When there is a valid collective bargaining  
25 agreement in effect, no question concerning unit ~~or representation~~ may be raised except  
26 during the period not more than 90 nor less than 60 days prior to the expiration date of the  
27 agreement. No question concerning representation may be raised during this period  
28 except by the executive director or the director's designee in accordance with subsection 3  
29 or by a bargaining agent, employer, employee or group of employees when the  
30 bargaining unit has failed to recertify its bargaining agent pursuant to subsection 3. The  
31 not more than 90-day nor less than 60-day period prior to the expiration date of an  
32 agreement regarding unit determination and representation ~~shall~~ does not apply to matters  
33 of unit clarification.

34           The bargaining agent certified by the executive director of the board as the exclusive  
35 bargaining agent ~~shall be~~ is required to represent all the public employees within the unit  
36 without regard to membership in the organization certified as bargaining agent, ~~provided~~  
37 except that any public employee at any time may present ~~his~~ the employee's grievance to  
38 the public employer and have ~~such~~ the grievance adjusted without the intervention of the  
39 bargaining agent, if the adjustment is not inconsistent with the terms of a collective  
40 bargaining agreement then in effect and if the bargaining agent's representative has been  
41 given reasonable opportunity to be present at any meeting of the parties called for the  
42 resolution of ~~such~~ the grievance.

43           **Sec. 2. 26 MRSA §968, sub-§3,** as amended by PL 1975, c. 564, §24, is further  
44 amended to read:

1           **3. Rule-making power.** The board may, after a public hearing, from time to time,  
2 adopt such rules of procedure as it ~~deems~~ considers necessary for the orderly conduct of  
3 its business and for carrying out the purposes of this chapter. These rules must include  
4 measures designed to preserve the integrity of recertification elections and the secrecy of  
5 the ballot, and must also include a determination of whether recertification elections may  
6 be conducted in person, by mail, by telephone, by Internet-based systems or by any other  
7 means determined to be fair, confidential and reliable. These rules may also establish a  
8 fee schedule applicable to an organization under consideration for bargaining agent in a  
9 recertification election for the purpose of funding such elections. Such rules ~~shall~~ must  
10 be published and made available to all interested parties. The board shall also, upon its  
11 own initiative or upon request, issue interpretative rules interpreting the provisions of this  
12 chapter. Such interpretative rules ~~shall be~~ are advisory only and ~~shall be~~ are not binding  
13 upon any court. Such interpretative rules must be in writing and available to any person  
14 interested therein.

15           **Sec. 3. 26 MRSA §979-F, sub-§2,** as amended by PL 1981, c. 277, is further  
16 amended to read:

17           **2. Elections.**

18           A. The executive director of the board or ~~his~~ the director's designee, upon signed  
19 request of a public employer alleging that one or more state employees or state  
20 employee organizations have presented to it a claim to be recognized as the  
21 representative of a bargaining unit of state employees, ~~or~~ upon signed petition of at  
22 least 30% of a bargaining unit of state employees that they desire to be represented by  
23 an organization or pursuant to a bargaining agent recertification required by  
24 paragraph F, shall conduct a secret ballot election to determine whether the  
25 organization represents a majority of the members of the bargaining unit. Such an  
26 election may be conducted at suitable work locations or through the United States  
27 mail ~~provided, nevertheless, that the.~~ The procedures adopted and employed by the  
28 Maine Labor Relations Board ~~shall~~ must maintain the anonymity of the voter from  
29 both the employee organizations and the management representatives involved.  
30 Employees must be permitted to cast a ballot for a period of 7 days from the  
31 commencement of the election.

32           B. The ballot ~~shall~~ must contain the name of such organization and that of any other  
33 organization showing written proof of at least 10% representation of the state  
34 employees within the unit, together with a choice for any state employee to designate  
35 that ~~he~~ the employee does not desire to be represented by any bargaining agent.  
36 ~~Where~~ When more than one organization is on the ballot and no one of the 3 or more  
37 choices receives a majority vote of the state employees voting, a run-off election ~~shall~~  
38 must be held. The run-off ballot ~~shall~~ must contain the 2 choices ~~which that~~ received  
39 the largest and 2nd largest number of votes. When an organization receives the  
40 majority of votes of those voting, the executive director of the board shall certify it as  
41 the bargaining agent. The bargaining agent certified as representing a bargaining unit  
42 ~~shall~~ must be recognized by the public employer as the sole and exclusive bargaining  
43 agent for all of the employees in the bargaining unit unless and until a decertification  
44 election by secret ballot ~~shall be~~ is held and the bargaining agent declared by the  
45 executive director of the board as not representing a majority of the unit.

1 C. Whenever 30% of the employees in a certified bargaining unit petition for a  
2 bargaining agent to be decertified, the procedures for conducting an election on the  
3 question ~~shall be~~ are the same as for representation as bargaining agent hereinbefore  
4 set forth.

5 D. No question concerning representation may be raised within one year of a  
6 certification or attempted certification. ~~Where~~ When there is a valid collective  
7 bargaining agreement in effect, no question concerning unit ~~or representation~~ may be  
8 raised except during the period not more than 90 nor less than 60 days prior to the  
9 expiration date of the agreement. Unit clarification proceedings are not subject to this  
10 time limitation and may be brought at any time consistent with section 979-E,  
11 subsection 3. No question concerning representation may be raised during this period  
12 except by the executive director or the director's designee in accordance with  
13 paragraph F or by a bargaining agent, employer, employee or group of employees  
14 when the bargaining unit has failed to recertify its bargaining agent pursuant to  
15 paragraph F.

16 E. The bargaining agent certified by the executive director of the board or ~~his~~ the  
17 director's designee as the exclusive bargaining agent ~~shall be~~ is required to represent  
18 all the public employees within the unit without regard to membership in the  
19 organization certified as bargaining agent, ~~provided~~ except that any public employee  
20 at any time may present ~~his~~ the employee's grievance to the public employer and have  
21 such grievance adjusted without the intervention of the bargaining agent, if the  
22 adjustment is not inconsistent with the terms of a collective bargaining agreement  
23 then in effect and if the bargaining agent's representative has been given reasonable  
24 opportunity to be present at any meeting of the parties called for the resolution of  
25 such grievance.

26 F. The executive director of the board or the director's designee shall periodically  
27 direct a secret ballot election to certify that a majority of the employees in a certified  
28 bargaining unit desire to be represented by the unit's currently certified bargaining  
29 agent. The recertification election must be conducted in accordance with this  
30 subsection, except that a majority vote for purposes of a recertification election is a  
31 majority of all employees in the bargaining unit.

32 If the bargaining agent is not recertified by a majority vote of all employees in the  
33 bargaining unit, the executive director or the director's designee shall decertify the  
34 bargaining agent, and the bargaining unit will not be represented by that bargaining  
35 agent. If the bargaining agent is decertified in accordance with this paragraph, the  
36 terms of any collective bargaining agreement that are in effect between the  
37 bargaining unit represented by that bargaining agent and the employer remain in  
38 effect except as to dues, service fees, grievances, arbitration and any other provisions  
39 regarding the bargaining agent. The employees in a bargaining unit that has failed to  
40 recertify its bargaining agent pursuant to this paragraph may certify a new bargaining  
41 agent pursuant to this section, except that, for a period of at least one year, the  
42 employees may not certify a new bargaining agent that is substantially similar to or  
43 affiliated with the previous bargaining agent.

44 The executive director or the director's designee shall commence recertification  
45 elections not less than 2 years and not more than 3 years after the effective date of

1            this paragraph and shall then subsequently commence recertification elections every  
2            even-numbered year. Recertification elections must be conducted no earlier than  
3            August 1st and no later than December 1st in any year in which they occur.

4            **Sec. 4. 26 MRSA §1287**, as enacted by PL 1983, c. 702, is amended to read:

5            **§1287. Determination of bargaining agent**

6            **1. Voluntary recognition.** Any judicial employee organization may file a request  
7            with the public employer alleging that a majority of the judicial employees in an  
8            appropriate bargaining unit wish to be represented for the purpose of collective  
9            bargaining between the public employer and the employees' organization. The request  
10           ~~shall~~ must describe the grouping of jobs or positions ~~which that~~ constitute the unit  
11           claimed to be appropriate and ~~shall~~ must include a demonstration of majority support.  
12           The request for recognition ~~shall~~ must be granted by the public employer, unless the  
13           public employer desires that an election determine whether the organization represents a  
14           majority of the members in the bargaining unit.

15           **2. Elections.** The executive director of the board or ~~his~~ the director's designee, upon  
16           signed request of a public employer alleging that one or more judicial employees or  
17           judicial employee organizations have presented to it a claim to be recognized as the  
18           representative of a bargaining unit of judicial employees, ~~or~~ upon signed petition of at  
19           least 30% of a bargaining unit of judicial employees that they desire to be represented by  
20           an organization or pursuant to a bargaining agent recertification required by subsection 3,  
21           paragraph E, shall conduct a secret ballot election to determine whether the organization  
22           represents a majority of the members of the bargaining unit. Such an election may be  
23           conducted at suitable work locations or through the United States mail, ~~provided that the~~  
24           The procedures adopted and employed by the board shall must maintain the anonymity of  
25           the voter from both the employee organizations and the management representatives  
26           involved. Employees must be permitted to cast a ballot for a period of 7 days from the  
27           commencement of the election.

28           **3. Voting.**

29           A. The ballot ~~shall~~ must contain the name of the organization and that of any other  
30           organization showing written proof of at least 10% representation of the judicial  
31           employees within the unit, together with a choice for any judicial employee to  
32           designate that ~~he~~ the employee does not desire to be represented by any bargaining  
33           agent. When more than one organization is on the ballot and no one of the 3 or more  
34           choices receives a majority vote of the judicial employees voting, a runoff election  
35           ~~shall~~ must be held. The runoff ballot ~~shall~~ must contain the 2 choices ~~which that~~  
36           received the largest and 2nd largest number of votes. When an organization receives  
37           the majority of votes of those voting, the executive director of the board shall certify  
38           it as the bargaining agent. The bargaining agent certified as representing a bargaining  
39           unit ~~shall~~ must be recognized by the public employer as the sole and exclusive  
40           bargaining agent for all of the employees in the bargaining unit, unless and until a  
41           decertification election by secret ballot ~~shall be~~ is held and the bargaining agent  
42           declared by the executive director of the board as not representing a majority of the  
43           unit.

1 B. Whenever 30% of the employees in a certified bargaining unit petition for a  
2 bargaining agent to be decertified, the procedures for conducting an election on the  
3 question ~~shall be~~ are the same as for representation as bargaining agent as set forth in  
4 this chapter.

5 C. No question concerning representation may be raised within one year of a  
6 certification or attempted certification. ~~Where~~ When there is a valid collective  
7 bargaining agreement in effect, no question concerning unit ~~or representation~~ may be  
8 raised, except during the period not more than 90 days nor less than 60 days prior to  
9 the expiration date of the agreement. Unit clarification proceedings are not subject to  
10 this time limitation and may be brought at any time consistent with section 1286,  
11 subsection 4. No question concerning representation may be raised during this period  
12 except by the executive director or the director's designee in accordance with  
13 paragraph E or by a bargaining agent, employer, employee or group of employees  
14 when the bargaining unit has failed to recertify its bargaining agent pursuant to  
15 paragraph E.

16 D. The bargaining agent certified by the executive director of the board or ~~his~~ the  
17 director's designee as the exclusive bargaining agent ~~shall be~~ is required to represent  
18 all the judicial employees within the unit without regard to membership in the  
19 organization certified as bargaining agent, ~~provided~~ except that any judicial employee  
20 at any time may present ~~his~~ the employee's grievance to the public employer and have  
21 that grievance adjusted without the intervention of the bargaining agent, if the  
22 adjustment is not inconsistent with the terms of a collective bargaining agreement  
23 then in effect and if the bargaining agent's representative has been given reasonable  
24 opportunity to be present at any meeting of the parties called for the resolution of that  
25 grievance.

26 E. The executive director of the board or the director's designee shall periodically  
27 direct a secret ballot election to certify that a majority of the employees in a certified  
28 bargaining unit desire to be represented by the unit's currently certified bargaining  
29 agent. The recertification election must be conducted in accordance with subsection  
30 2, except that a majority vote for purposes of a recertification election is a majority of  
31 all employees in the bargaining unit.

32 If the bargaining agent is not recertified by a majority vote of all employees in the  
33 bargaining unit, the executive director or the director's designee shall decertify the  
34 bargaining agent, and the bargaining unit will not be represented by that bargaining  
35 agent. If the bargaining agent is decertified in accordance with this paragraph, the  
36 terms of any collective bargaining agreement that are in effect between the  
37 bargaining unit represented by that bargaining agent and the employer remain in  
38 effect except as to dues, service fees, grievances, arbitration and any other provisions  
39 regarding the bargaining agent. The employees in a bargaining unit that has failed to  
40 recertify its bargaining agent pursuant to this paragraph may certify a new bargaining  
41 agent pursuant to this section, except that, for a period of at least one year, the  
42 employees may not certify a new bargaining agent that is substantially similar to or  
43 affiliated with the previous bargaining agent.

44 The executive director or the director's designee shall commence recertification  
45 elections not less than 2 years and not more than 3 years after the effective date of



1 this paragraph and shall then subsequently commence recertification elections every  
2 even-numbered year. Recertification elections must be conducted no earlier than  
3 August 1st and no later than December 1st in any year in which they occur.

#### 4 **SUMMARY**

5 This bill makes the following changes to the municipal public employees labor  
6 relations laws, the state employees labor relations laws and the judicial employees labor  
7 relations laws.

8 1. It adds a new requirement for recertification elections, which must start within 3  
9 years of the effective date of the provision and must be held every even-numbered year  
10 after that, to ensure that a majority of the employees in the collective bargaining unit  
11 support their current collective bargaining agent. If the bargaining agent does not receive  
12 votes from a majority of the employees in the bargaining unit, the bargaining agent is  
13 decertified and will no longer represent the bargaining unit.

14 2. It permits employees who have decertified a bargaining agent pursuant to the new  
15 recertification election process to certify a new bargaining agent at any time, regardless of  
16 whether a collective bargaining agreement is still in effect.

17 3. It permits an employee to cast a ballot for a period of 7 days from the  
18 commencement of a collective bargaining election.

19 4. It adds a requirement that the Maine Labor Relations Board adopt rules to  
20 preserve the integrity of collective bargaining recertification elections and the secrecy of  
21 the ballot, including a determination of acceptable methods for submitting a ballot. These  
22 rules may also establish a fee schedule applicable to an organization under consideration  
23 for bargaining agent in a recertification election for the purpose of funding such elections.