

MAINE STATE LEGISLATURE

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5/13/18
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Majority

L.D. 1770

Date: 4/13/2018

(Filing No. S-473)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

128TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 657, L.D. 1770, Bill, "An Act To Revise Laws Regarding Unemployment That Were Amended or Affected by Recently Enacted Legislation"

Amend the bill by inserting after the enacting clause and before section 1 the following:

'Sec. 1. 26 MRSA §1085 is enacted to read:

§1085. Required staffing

1. Positions filled. Notwithstanding any other provision of law, and without further approval or justification, the department shall promptly fill all of the following positions within the Department of Labor for which funding is provided:

- A. Customer representative associate;
- B. Customer representative specialist;
- C. Claims adjudicator;
- D. Hearings examiner;
- E. Labor program specialist; and
- F. Field advisor and examiner.

2. Notice of employment. The department shall widely post public notices for the vacancies listed in subsection 1 on publicly accessible state websites and in other appropriate locations. Public notice must be posted within 30 days of each vacancy that occurs. The department shall recruit and hire qualified individuals for these vacant positions.

Sec. 2. 26 MRSA §1194, sub-§§1-B and 1-C are enacted to read:

1-B. Alternative filing methods. The department shall provide alternative methods to an Internet-based system for the prompt filing of initial and continuing claims for unemployment benefits, including the filing of work search documentation, and for

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1 obtaining information. The alternative methods must include filing by telephone, using a
2 telephone system that allows a claimant to leave a message or request a return telephone
3 call. A claimant may choose which method to use for the filing of initial and continuing
4 claims for unemployment benefits, including the filing of work search documentation,
5 and for obtaining information.

6 **1-C. Claimant service response telephone system.** The department shall maintain
7 a claimant service response telephone system, which allows a claimant to leave a message
8 by telephone or request a return telephone call. The claimant service response telephone
9 system must enable the department to promptly receive and promptly respond to claimant
10 inquiries, including those related to the filing of claims or the prompt or correct payment
11 of benefits. If a claimant contacts the department through the claimant service response
12 telephone system, the department must consider that contact when determining if the
13 claimant has good cause for not complying with section 1192, subsection 1, 2, 3, 12 or
14 13.

15 **Sec. 3. 26 MRSA §1194, sub-§2,** as amended by PL 2003, c. 163, §1, is further
16 amended to read:

17 **2. Determination.** A representative designated by the commissioner, and in this
18 chapter referred to as a deputy, shall promptly examine the first claim filed by a claimant
19 in each benefit year and shall determine the weekly benefit amount and maximum benefit
20 amount potentially payable to the claimant during that benefit year in accordance with
21 section 1192, subsection 5.

22 The deputy shall promptly examine all subsequent claims filed and, on the basis of facts,
23 shall determine whether or not that claim is valid with respect to sections 1192 and 1193,
24 other than section 1192, subsection 5, or shall refer that claim or any question involved in
25 the claim to the Division of Administrative Hearings or to the commission, which shall
26 make a determination with respect to the claim in accordance with the procedure
27 described in subsection 3, except that in any case in which the payment or denial of
28 benefits is subject to section 1193, subsection 4, the deputy shall promptly transmit a
29 report with respect to that subsection to the Director of Unemployment Compensation
30 upon the basis of which the director shall notify appropriate deputies as to the
31 applicability of that subsection.

32 The deputy shall determine in accordance with section 1221, subsection 3, paragraph A,
33 the proper employer's experience rating record, if any, against which benefits of an
34 eligible individual must be charged, if and when paid.

35 The deputy shall promptly notify the claimant and any other interested party of the
36 determinations and reasons for the determinations. Subject to subsection 11, unless the
37 claimant or any such interested party, within 15 calendar days after that notification was
38 mailed to the claimant's last known address, files an appeal from that determination, that
39 determination is final, except that the period within which an appeal may be filed may be
40 extended, for a period not to exceed an additional 15 calendar days, for good cause
41 shown. If new evidence or pertinent facts that would alter that determination become
42 known to the deputy prior to the date that determination becomes final, a redetermination
43 is authorized, but that redetermination must be mailed before the original determination
44 becomes final.

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1 If an employer's separation report for an employee is not received by the office specified
2 on the separation report within 10 days after that report was requested, the claim must be
3 adjudicated on the basis of information at hand. If the employer's separation report
4 containing possible disqualifying information is received after the 10-day period and the
5 claimant is denied benefits by a revised deputy's decision, benefits paid prior to the date
6 of the revised decision do not constitute an overpayment of benefits. Any benefits paid
7 after the date of the revised decision constitute an overpayment. Only the most recent
8 employer from which the claimant's separation occurred may contest whether a
9 disqualification may be applied for reasons related to the separation pursuant to section
10 1193.

11 If an employer files an amended separation report or otherwise raises a new issue as to
12 the employee's eligibility or changes the wages or weeks used in determining benefits that
13 results in a denial of benefits or a reduction of the weekly benefit amount, the benefits
14 paid prior to the date the determination is mailed do not constitute an overpayment. Any
15 benefits received after that date to which the claimant is not entitled pursuant to a new
16 determination based on that new employer information constitute an overpayment.

17 If, during the period a claimant is receiving benefits, new information or a new issue
18 arises concerning the claimant's eligibility for benefits or which affects the claimant's
19 weekly benefit amount, benefits may not be withheld until a determination is made on the
20 issue. Before a determination is made, written notice shall be mailed to the claimant and
21 other interested parties, which must include the issue to be decided, the law upon which it
22 is based, any factual allegations known to the bureau, the right to a fact-finding interview,
23 the date and location of the scheduled interview and the conduct of the interview and
24 appeal. The fact-finding interview must be scheduled not less than 5 days nor more than
25 14 days after the notice is mailed. The bureau shall include in the notice a statement
26 notifying the claimant that any benefits paid prior to the determination may be an
27 overpayment under applicable law and recoverable by the bureau if it is later determined
28 that the claimant was not entitled to the benefits. If the claimant does not appear for the
29 scheduled interview, the deputy shall make a determination on the basis of available
30 evidence. The deputy shall make a prompt determination of the issue based solely on any
31 written statements of interested parties filed with the bureau before the interview,
32 together with the evidence presented by interested parties who personally appeared at the
33 interview. Upon request and notice to all parties at the interview, the deputy may accept
34 corroborative documentary evidence after the interview. In no other case may the deputy
35 base a decision on evidence received after the interview has been held.

36 A. This subsection does not apply when the claimant reports that, in the week
37 claimed:

- 38 (1) The claimant worked and reports a specific amount of earnings for that work;
- 39 (2) The claimant worked and had earnings from that work, but does not furnish
40 the amount of earnings;
- 41 (3) The claimant reports that the claimant was not able or available for work for
42 a specific portion of the week and there is sufficient information for the deputy to
43 determine that the inability or unavailability for work was for good cause. If the
44 information provided by the claimant indicated unavailability during the claim

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1 week, but is not specific as to the amount of time involved, the department shall
2 immediately initiate a fact-finding interview with the individual and make a
3 determination regarding the claimant's weekly benefit amount on the basis of that
4 interview. If the department is not able to conduct an immediate fact-finding
5 interview with the claimant, the notification and fact-finding process described in
6 this subsection must be followed; or

7 (4) The claimant received a specific amount of other remuneration as described
8 in section 1193, subsection 5.'

9 Amend the bill by adding after section 6 the following:

10 **Sec. 7. Deadline.** The Department of Labor shall post public notice of the
11 vacancies on the effective date of this Act in positions identified in the Maine Revised
12 Statutes, Title 26, section 1085, subsection 1 in the manner specified in Title 26, section
13 1085, subsection 2 no later than 30 days after the effective date of this Act. The staffing
14 for the positions identified in Title 26, section 1085, subsection 1 that are vacant on the
15 effective date of this Act must be achieved as soon as possible after the effective date of
16 this Act, but no later than December 30, 2018. The department shall recruit and hire
17 qualified individuals for these vacant positions.

18 **Sec. 8. Correction of problems.** Until January 1, 2019, the Department of Labor
19 shall provide an opportunity for all unemployment insurance claimants denied benefits
20 for failure to file a timely claim for benefits or work search documentation, as required by
21 the Maine Revised Statutes, Title 26, section 1192, subsections 1 and 2, in any week
22 during the period from December 1, 2017 until July 1, 2018 to apply for those benefits
23 and shall grant good cause for failure to file a timely claim for benefits or work search
24 documentation for those weeks if the claimant asserts that the claimant's inability to use
25 the department's Internet-based filing system was the basis for the claimant's failure to
26 file.

27 **Sec. 9. Allocation of money credited to State of Maine account in**
28 **Unemployment Trust Fund under Section 903(f) of federal Social Security**
29 **Act.** Money credited to the account of the State of Maine in the federal Unemployment
30 Trust Fund by the United States Secretary of the Treasury on July 29, 2009 pursuant to
31 Section 903(f) of the federal Social Security Act may not be requisitioned from the State's
32 account or used except for the payment of benefits and for the payment of expenses
33 incurred for the administration of the State's unemployment compensation law and public
34 employment offices. Money used for the payment of benefits is requisitioned as defined
35 in the Maine Revised Statutes, Title 26, section 1162. Money requisitioned and used for
36 the payment of expenses incurred for the administration of the State's unemployment
37 compensation law and public employment offices requires a specific appropriation by the
38 Legislature as provided in subsection 1. That use is only permissible if the expenses are
39 incurred and the money is requisitioned after the effective date of a law making an
40 appropriation and specifying the purposes for which the money is appropriated and the
41 amounts appropriated for those purposes. Any amount that may be obligated under such
42 an appropriation is limited to an amount that does not exceed the amount by which the
43 aggregate of the amounts transferred to the account of the State of Maine pursuant to
44 Section 903(f) of the federal Social Security Act exceeds the aggregate of the amounts

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used by the State pursuant to this Act and charged against the amounts transferred to the account of the State of Maine.

For purposes of this section, the amounts obligated under an appropriation for administrative purposes must be charged against transferred amounts at the exact time the obligation is entered into. The appropriation, obligation and expenditure or other disposition of money appropriated under this section must be accounted for in accordance with standards established by the United States Secretary of Labor. Money appropriated as provided in this Act for the payment of administration must be requisitioned as needed for the payment of obligations incurred under the appropriation and, upon requisition, must be deposited in the Employment Security Administration Fund from which payments are made. Money so deposited must, until expended, remain a part of the unemployment fund and, if it will not be immediately expended, must be returned promptly to the account of the State of Maine in the federal Unemployment Trust Fund.

1. Allocation maintaining state unemployment compensation and public employment system. There is allocated out of funds made available to the State under Section 903(f) of the federal Social Security Act, as amended, the sum of \$895,156 in accordance with this section, to be used under the direction of the Department of Labor, for the purpose of maintaining and operating the State's unemployment compensation and public employment system as amended by this Act. The uses include both personnel and nonpersonnel administrative costs required to administer the unemployment insurance program and deliver employment assistance services through the Department of Labor's career center system.

The amount obligated pursuant to this Act may not exceed at any time the amount by which the aggregate of the amount transferred to the account of the State of Maine pursuant to Section 903(f) of the federal Social Security Act exceeds the aggregate of the amounts obligated for administration and paid out for benefits and required by law to be charged against the amounts transferred to the State of Maine account.

Sec. 10. Appropriations and allocations. The following appropriations and allocations are made.

LABOR, DEPARTMENT OF

Employment Security Services 0245

Initiative: Allocates funds for 11 limited-period Customer Representative Specialist - Benefits positions and related All Other costs to support the voice mail option to an Internet-based system for filing initial and continuing claims for unemployment benefits. These positions end June 30, 2019.

FEDERAL EXPENDITURES FUND	2017-18	2018-19
Personal Services	\$0	\$529,643
All Other	\$0	\$97,658
FEDERAL EXPENDITURES FUND TOTAL	\$0	\$627,301

Employment Security Services 0245

1 Initiative: Allocates one-time funds for the cost to add the First in Line feature to the
 2 Interactive Voice Response System that manages calls to the claims centers.

3	FEDERAL EXPENDITURES FUND	2017-18	2018-19
4	All Other	\$0	\$161,000
5			
6	FEDERAL EXPENDITURES FUND TOTAL	<u>\$0</u>	<u>\$161,000</u>

7 **Employment Security Services 0245**

8 Initiative: Allocates funds for the annual maintenance of the First in Line feature.

9	FEDERAL EXPENDITURES FUND	2017-18	2018-19
10	All Other	\$0	\$24,000
11			
12	FEDERAL EXPENDITURES FUND TOTAL	<u>\$0</u>	<u>\$24,000</u>

13	LABOR, DEPARTMENT OF		
14	DEPARTMENT TOTALS	2017-18	2018-19
15			
16	FEDERAL EXPENDITURES FUND	\$0	\$812,301
17			
18	DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$812,301</u>
19			

20 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
 21 section number to read consecutively.

22 **SUMMARY**

23 This amendment adds several provisions to the bill to make the following changes to
 24 the Employment Security Law.

25 1. It requires the Department of Labor to fill vacancies for 6 different position types
 26 for which funding is provided;

27 2. It requires the Department of Labor to provide options to an Internet-based system
 28 for the filing of claims for unemployment benefits, including the filing of work search
 29 documentation, and for obtaining information. The options must include filing by
 30 telephone, using a telephone system that allows a claimant to leave a message or request a
 31 return telephone call. The individual making a claim for unemployment benefits may
 32 choose which option to use.

33 3. It requires the Department of Labor to maintain a claimant service response
 34 telephone system that allows a claimant to leave a message or request a return telephone
 35 call in order to enable the department to promptly receive and promptly respond to
 36 claimant inquiries. If a claimant timely contacts the claimant service response telephone

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COMMITTEE AMENDMENT "A" to S.P. 657, L.D. 1770

1 system, the department must consider that contact when determining if the claimant had
2 good cause for not complying with the requirements to file a timely claim for benefits,
3 register for work and actively search for work, file work search documentation or
4 participate in reemployment services and eligibility assessment.

5 4. It clarifies that only the most recent employer from which the claimant's
6 employment separation occurred may contest whether a disqualification may be applied
7 to the claimant for reasons related to the separation.

8 The amendment also directs the Department of Labor to provide until January 1,
9 2019 an opportunity for all unemployment insurance claimants denied benefits for failure
10 to file a timely claim for benefits or work search documentation in any week during the
11 period from December 1, 2017 until July 1, 2018 to apply for those benefits and provides
12 that the Department of Labor must grant good cause for failure to file a timely claim for
13 benefits or work search documentation for those weeks if the claimant asserts that the
14 claimant's inability to use the department's Internet-based filing system was the basis for
15 the claimant's failure to file.

16 In 2009, Maine received a \$28,200,000 distribution to the Unemployment Trust Fund
17 under the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5,
18 123 Stat. 115 (2009), which may be used to maintain the State's unemployment and
19 public employment system or to pay regular unemployment benefits. There is
20 \$27,503,000 remaining from this distribution. The amendment authorizes the use of
21 \$895,156 of those funds to meet the allocation required in the amendment. The funds
22 will be used to maintain and operate the State's unemployment and employment
23 programs, including paying the administrative costs required to administer the
24 unemployment insurance program and delivering employment assistance services through
25 the Department of Labor's career center system. The intent of the authorization of funds
26 is to provide the Department of Labor with funding necessary to implement the
27 provisions of this amendment.

28 **FISCAL NOTE REQUIRED**

29 **(See attached)**

COMMITTEE AMENDMENT



128th MAINE LEGISLATURE

LD 1770

LR 2641(02)

An Act To Revise Laws Regarding Unemployment That Were Amended or Affected by Recently Enacted Legislation

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-473)
Committee: Labor, Commerce, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

	FY 2017-18	FY 2018-19	Projections FY 2019-20	Projections FY 2020-21
Appropriations/Allocations				
Federal Expenditures Fund	\$0	\$812,301	\$0	\$0
Revenue				
Federal Expenditures Fund	\$0	\$895,156	\$0	\$0
Other Funds	\$0	(\$895,156)	\$0	\$0
Transfers				
Federal Expenditures Fund	\$0	(\$82,855)	\$0	\$0
Other Special Revenue Funds	\$0	\$82,855	\$0	\$0

Fiscal Detail and Notes

This bill includes one-time Federal Expenditures Fund allocations of \$812,301 in fiscal year 2018-19 to the Employment Security Services program within the Department of Labor to add a voice mail option to the internet-based system for filing initial and continuing claims for unemployment benefits. A portion of unspent 2009 Reed Act funds will be used to fund the allocations as follows: \$627,301 for 11 limited-period Customer Representative Specialist - Benefits positions, \$161,000 to add a First in Line feature to the Interactive Voice Response System that manages calls to the claims centers and \$24,000 for the annual cost of maintaining the First In Line feature. The positions will begin on July 1, 2018 and end on June 30, 2019. The department has also indicated that filling eight vacant customer support positions that are already funded along with the new limited-period positions will be sufficient to implement the voice mail system.

This fiscal note also reflects the transfer for \$82,855 in fiscal year 2018-19 to the Department of Labor, Office of the Commissioner's Special Revenue Funds account to cover its share of the department's associated indirect costs in accordance with the federally approved indirect cost plan.

This legislation also requires the Department to immediately fill certain vacant positions for which funding is available, including Customer Representative Associate, Customer Representative Specialists, Claims Adjudicator, Hearings Examiner, Labor Program Specialist and Field Advisor and Examiner. A query of the State's data warehouse indicates that there are currently 30 vacant positions with these job class titles. These vacant positions have already been budgeted. The 8 needed for the voice mail system are included in the 30.

Changes made in this legislation regarding how benefits paid to an eligible individual under the Employment Security Law are charged against the experience rating record of the individual's previous employers will have no fiscal impact on the Unemployment Trust Fund or the employer contribution rate schedule currently in effect. However, the Department of Labor will incur one-time Federal Expenditures Fund costs of approximately \$900,000 in fiscal year 2018-19 to make the necessary programming updates in order to implement the change. The Department has indicated that it has federal funds available for this purpose.