

# MAINE STATE LEGISLATURE

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Amendment Name: Amendment CA (H-852) (LD 1959 2020)

Date: 8/20/2020



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Date: (Filing No. H- )

**LABOR AND HOUSING**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
129TH LEGISLATURE  
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1403, L.D. 1959, Bill, “An Act To Include within the Definition of "Public Employee" Those Who Have Been Employed Less than 6 Months”

Amend the bill by striking out the title and substituting the following:

**'An Act To Include within the Definition of "Public Employee" and "Judicial Employee" Those Who Have Been Employed Less than 6 Months'**

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

**'Sec. 1. 5 MRSA §7051, sub-§5,** as amended by PL 1987, c. 240, §3, is further amended to read:

**5. Probationary period; permanent appointments.** All original appointments to the classified service and all subsequent promotional appointments within the classified service ~~shall must~~ be for a probationary period. The duration of the probationary period ~~shall be is~~ determined by the director in consultation with the director or commissioner of the agency, but in no case may it be for less than 6 months.

~~A. Probationary employees shall~~ An employee during the probationary period must be reviewed at the end of their the employee's 3rd month of employment by their supervisors the employee's supervisor. The supervisor and the employee shall mutually discuss the job tasks and the performance of the employee, including any necessary improvements.

~~B. Probationary employees shall~~ An employee during the probationary period must be included in the payroll of the department in which they have the employee has been hired at the time of the commencement of their the employee's duties. Probationary employees shall An employee during the probationary period must be compensated in the same manner as a permanent full-time employees employee, provided they have as long as the employee has been hired in accordance with all applicable laws and procedures.

**COMMITTEE AMENDMENT**

1            C. During the probationary period, an employee may be dismissed, suspended or  
2            otherwise disciplined without cause. Dismissal, suspension or any other disciplinary  
3            action against an employee during the probationary period is not subject to the  
4            grievance and arbitration provision of the collective bargaining agreement.

5            **Sec. 2. 5 MRSA §7051, sub-§7**, as amended by PL 1987, c. 9, §3 and PL 1995, c.  
6            560, Pt. K, §82, affected by §83 and amended by PL 2001, c. 354, §3 and PL 2003, c.  
7            689, Pt. B, §6, is further amended to read:

8            **7. Dismissal and disciplinary action.** ~~An~~ Except as provided in subsection 5, an  
9            appointing authority may dismiss, suspend or otherwise discipline an employee in the  
10           classified service for cause. This right is subject to the right of appeal and arbitration of  
11           grievances set forth in the applicable labor contract, in sections 7081 to 7084 or by civil  
12           service rule; and sections 7081 to 7084 shall apply to any employee who has satisfactorily  
13           completed an initial probationary period. This subsection does not apply to unclassified  
14           employees listed in section 931, nor does this subsection in any way limit the collective  
15           bargaining rights of classified and unclassified employees. This subsection does not apply  
16           to an employee appointed to a major policy-influencing position listed in sections 932 to  
17           953.

18           Notwithstanding any ~~other~~ provision of law to the contrary, the head of any institution  
19           under the control of the Department of Health and Human Services as the appointing  
20           authority may suspend with pay any employee who is charged by indictment with the  
21           commission of a criminal offense involving acts alleged to have been perpetrated upon  
22           any resident or residents of any such institution. Any suspension with pay may be  
23           authorized by the appointing authority only when to permit the employee to remain on  
24           duty at the institution would be against the best interest of any one or more of the  
25           residents of the institution, and authorization for suspension with pay ~~shall apply~~ applies  
26           only during the pendency of the criminal proceedings in the trial court, but not longer  
27           than 30 working days. Sections 7081 to 7084 ~~shall do~~ do not apply to suspension with pay  
28           ordered by the appointing authority under this paragraph.'

29           Amend the bill by inserting after section 3 the following:

30           '**Sec. 4. 26 MRSA §1282, sub-§5, ¶E**, as enacted by PL 1983, c. 702, is amended  
31           to read:

32           E. Who is appointed to serve as a law clerk to a judge or a justice; or

33           **Sec. 5. 26 MRSA §1282, sub-§5, ¶F**, as enacted by PL 1983, c. 702, is amended  
34           to read:

35           F. Who is a temporary, seasonal or on-call employee, including interns; ~~or~~.

36           **Sec. 6. 26 MRSA §1282, sub-§5, ¶G**, as enacted by PL 1983, c. 702, is repealed.

37           **Sec. 7. 26 MRSA §1283-A** is enacted to read:

38           **§1283-A. Judicial employees; probationary period**

39           If the public employer requires a judicial employee to complete a probationary  
40           period, that judicial employee may be dismissed, suspended or otherwise disciplined  
41           without cause. Dismissal, suspension or any other disciplinary action against a judicial

1 employee during the probationary period is not subject to the grievance and arbitration  
2 provision of the collective bargaining agreement.

3 **Sec. 8. 26 MRSA §1285, sub-§1, ¶E**, as amended by PL 1989, c. 596, Pt. N, §6,  
4 is further amended to read:

5 E. To confer and negotiate in good faith with respect to wages, hours, working  
6 conditions and contract grievance arbitration, except that by such obligation neither  
7 party may be compelled to agree to a proposal or be required to make a concession.  
8 All matters relating to the relationship between the employer and employees ~~shall be~~  
9 are the subject of collective bargaining, except those matters ~~which that~~ are  
10 prescribed or controlled by law. Such matters appropriate for collective bargaining, to  
11 the extent they are not prescribed or controlled by law, include, but are not limited to:

12 (1) Wage and salary schedules to the extent they are inconsistent with rates  
13 prevailing in commerce and industry for comparable work within the State;

14 (2) Work schedules relating to assigned hours and days of the week;

15 (3) Use of vacation or sick leave, or both;

16 (4) General working conditions;

17 (5) Overtime practices; and

18 (6) Rules for personnel administration, except for rules relating to applicants for  
19 employment and employees in an initial probationary status, including any  
20 extensions thereof, ~~provided that as long as~~ the rules are not discriminatory by  
21 reason of an applicant's race, color, creed, sex or national origin.

22 Cost items ~~shall~~ must be included in the Judicial Department's next operating budget  
23 in accordance with Title 4, section 24. If the Legislature rejects any of the cost items  
24 submitted to it, all cost items submitted ~~shall~~ must be returned to the parties for  
25 further bargaining. Cost items related to a collective bargaining agreement reached  
26 under this chapter and submitted to the Legislature for its approval under this  
27 subsection ~~shall~~ may not be submitted in the same legislation that contains cost items  
28 for employees exempted from the definition of "judicial employee" under section  
29 1282, subsection 5, except that cost items for employees exempted under section  
30 1282, subsection 5, ~~paragraphs paragraph F and G~~, need not be excluded.

31 **Sec. 9. 30-A MRSA §501, sub-§2-A**, as enacted by PL 2009, c. 106, §1, is  
32 amended to read:

33 **2-A. Probationary period for corrections officials.** ~~Beginning October 1, 2009, a~~  
34 A person who is hired as jailer, master, keeper or a subordinate assistant or employee  
35 under section 1501 must complete an employment probationary period that lasts for one  
36 year. During the probationary period, a person who is hired as jailer, master, keeper or a  
37 subordinate assistant or employee under section 1501 may be dismissed, suspended or  
38 otherwise disciplined without cause. Dismissal, suspension or any other disciplinary  
39 action against an employee during the probationary period is not subject to the grievance  
40 and arbitration provision of the collective bargaining agreement.

1 **Sec. 10. 30-A MRSA §2701**, as amended by PL 1993, c. 744, §15, is further  
2 amended by adding at the end a new paragraph to read:

3 During the probationary period, an employee may be dismissed, suspended or  
4 otherwise disciplined without cause. Dismissal, suspension or any other disciplinary  
5 action against an employee during the probationary period is not subject to the grievance  
6 and arbitration provision of the collective bargaining agreement.'

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

9 **SUMMARY**

10 This amendment provides that a person who has been an employee of the judicial  
11 branch for less than 6 months is considered a judicial employee for the purposes of the  
12 law governing judicial employees labor relations. It clarifies that a person who has been  
13 an employee of the State or another public employer for less than 6 months may be  
14 dismissed, suspended or otherwise disciplined without cause during the probationary  
15 period. It specifies that termination of an employee or any other disciplinary action  
16 against an employee during the probationary period is not subject to the grievance and  
17 arbitration provision of the collective bargaining agreement.



# 129th MAINE LEGISLATURE

LD 1959

LR 3101(02)

**An Act To Include within the Definition of "Public Employee" Those Who Have Been Employed Less than 6 Months**

**Fiscal Note for Bill as Amended by Committee Amendment " "**

**Committee: Labor and Housing**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund

### Fiscal Detail and Notes

Additional costs to the Maine Labor Relations Board and to the Department of Administrative and Financial Services associated with the requirements of this legislation can be absorbed within existing budgeted resources.