

# MAINE STATE LEGISLATURE

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**Legislative Document**

**No. 896**

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H. P. 1303

House of Representatives, February 22, 1951.

Referred to the Committee on Education. Sent up for concurrence and 1250 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Winchenpaw of Friendship.

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**STATE OF MAINE**

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FIFTY-ONE

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**AN ACT Relating to Teachers' Tenure.**

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

**Sec. 1. R. S., c. 37, §§ 242-260, additional.** Chapter 37 of the revised statutes is hereby amended by adding thereto 19 new sections to be numbered sections 242 to 260, inclusive, to read as follows:

**'Teachers' Tenure**

**Sec. 242. Title.** Sections 242 to 260, inclusive, shall be known and may be cited as "The Teachers' Tenure Act."

**Sec. 243. Declaration of purpose.** The purpose of sections 242 to 260, inclusive, is to further the public interest by conferring a contractual right on all educational employees as defined herein.

**Sec. 244. Definitions.** As used in sections 242 to 260, inclusive, the words "educational employee" or "employee" mean any person who, on or after the effective date of sections 242 to 260, inclusive, for the purpose of submitting it to vote under the "local option" provisions therein, holds, or is qualified to hold, a certificate from the commissioner of education to serve as a regular employee in a public school of this state.

The words "educational board" or "board" mean board of education, board of directors, or other instrumentality which, on or after the effective date of sections 242 to 260, inclusive, has the authority to engage an educational employee to serve in a public school of this state.

The word "notice" means the leaving of documents personally with or the mailing of the documents by United States registered mail with the postage thereon prepaid to the last known address of the person or public agency to be notified. Service of notice upon a public agency shall be sufficient when made upon a member or officer of the agency.

The word "year," for the purpose of determining the length of the probationary period, means 75% of the number of days the schools of the municipality in which such teacher is employed are actually open for instruction, unless a lesser number of days is considered sufficient by the educational board.

The words "school year" mean the period between the time school opens in the municipality after the summer vacation and the beginning of the next succeeding summer vacation.

The words "and" and "or" are convertible as the sense of the statute may require.

The word "demote" means transfer to a position carrying a lower salary or compensation, or lower the rank of, whether by transfer or otherwise.

The word "commissioner" means state commissioner of education.

The word "tenure" means the right to continuous employment within a municipality adopting the provisions of sections 242 to 260, inclusive, until the teacher resigns, elects to retire, or is retired pursuant to the law controlling retirement, or is dismissed, according to the provisions of sections 242 to 260, inclusive.

The words "adopting municipality" mean any city or town which shall have adopted the provisions of sections 242 to 260, inclusive, at any election called as provided for herein.

Sec. 245. Contracts. Every educational board shall enter into contract with the educational employees who, on the effective date of sections 242 to 260, inclusive, in the municipalities adopting it, are serving in its employ in the public schools of such municipality, at or before the beginning of the first school year beginning after such date and shall enter into contract with all other educational employees who may serve in its employ in the public schools of such municipality, at or before the beginning of such

service. Contracts made under the provisions of this paragraph shall become effective on or before the final dates by which they must be executed.

The said contracts shall be in writing, in triplicate, on uniform blanks furnished by the commissioner and shall be executed on behalf of the educational board by its chairman and secretary and signed by the educational employee. The secretary shall furnish one copy of the contract to the educational employee and a second copy to the commissioner, who shall file the said copy among the records of his office; and the said secretary shall file the third copy among the records of the educational board.

The said contracts shall contain the following statements and forms of statement, and no other:

"It is hereby agreed by and between . . . . ., the employee, and . . . . ., the employer; that the said employee, beginning . . . ., 19. . ., shall serve in the employ of the said employer and its successors for a term of one school year, for an annual compensation of \$. . . ., payable in equal monthly or semi-monthly installments, less the contributions required by law to be paid to the Maine state retirement system and less other deductions required by law and not made for reasons of economy.

"It is further agreed by the parties hereto that this contract shall continue in force from year to year, until terminated in accordance with the provisions of the Teachers' Tenure Act, and any amendments thereto prior to the date of this agreement, and that until such termination each of the said parties shall enjoy the rights and shall assume the obligations therein provided, none of which rights or obligations may be waived, either orally or otherwise.

"Nothing in this contract shall prevent the increasing of the compensation of the said employee above.

"This contract is executed this . . . . . day of . . . . 19. . . ."

No contract made under the provisions of this section, shall be terminated except by the dismissal of the educational employee in accordance with the provisions of sections 242 to 260, inclusive, or by the resignation, retirement or death of the educational employee.

Sec. 246. Probation; notices. The probationary period for teachers who shall have served less than a total of 3 years in the profession shall be 3 years.

Teachers who have served a total of at least 3 years in any municipality within or without this state, upon election in an adopting municipality,

may be required to serve a probationary period of 3 years. However, the board may by a unanimous vote confer tenure on such teachers at any time.

The educational board shall notify probationary teachers of their tenure status for the ensuing year not later than April 1 of each school year.

The failure of the educational board to notify a probationary teacher of his tenure status before April 1 of any school year shall be construed as offering tenure to such teacher.

Acceptance of tenure status by the teacher shall be presumed, unless the teacher, within 30 days after April 1, shall in writing, decline to accept tenure status.

**Sec. 247. Dismissal and demotion.** Except as provided in the next paragraph, no educational employee serving in a public school of an adopting municipality shall be dismissed for any cause other than physical disability, mental disability, immorality, or gross inefficiency and no such employee shall be demoted for any cause other than inefficiency. The specific nature of any such demotion shall be based solely upon the specific nature of the inefficiency.

Any educational employee serving in a public school of an adopting municipality may be dismissed or demoted if such action is necessitated by the elimination of a position and if such elimination is required, or rendered advisable, by a substantial decrease in school enrollment or by a change in school curriculum or school organization which is demonstrably desirable for reasons other than reasons of economy. Such dismissal or demotion shall be governed by the following provisions:

I. The educational employee last engaged by the board concerned, and performing the type of service being discontinued by the elimination of the position, shall be the particular employee to be ordered dismissed or demoted, but before such employee is so ordered, he shall have been offered the opportunity to accept any vacant position at the disposal of the board, for which he is properly qualified.

II. Educational employees who have been ordered dismissed or demoted under the provisions of this section shall be offered the opportunity, during the period of such dismissal or demotion, or impending dismissal or demotion, to accept any vacant position at the disposal of the board concerned, and for which they are properly qualified, in the inverse order in which their dismissals and demotions, taken together, were ordered, provided that, the opportunity to accept such position shall be accorded first as stated in subsection I.

III. No educational board shall engage any person who is not already serving in its employ to fill any vacant position at its disposal if there are any educational employees who have been, or who are about to be, ordered dismissed or demoted by the board under the provisions of this section, and who have not been restored to their original status, who are properly qualified for, and willing to accept, such position.

IV. Every educational employee whose dismissal or demotion is ordered under the provisions of this section shall be given by the board concerned, prior to the effective date of such dismissal or demotion, a letter of honorable dismissal or honorable demotion, as the case may be.

V. No educational employee whose dismissal under the provisions of this section has become effective shall be prevented from engaging in other occupation during the period of such dismissal.

Sec. 248. Charges against employee. Charges against an employee shall:

- I. Be filed only during the school year;
- II. Be in writing in duplicate and signed by the complainant;
- III. Be sufficiently specific to permit the nature and cause of the complaint to be rightly understood and
- IV. Be filed with the secretary of the board.

The secretary of the board shall within 3 days thereafter send or deliver one copy of the complaint to the employee concerned.

In the event that such complaint becomes the subject of board action indicating dismissal or demotion the secretary of the board shall send notice of such impending action to the employee within 3 days thereafter.

Within 20 days after the receipt of such notice the employee may file his answer in writing and request the board for hearing under the provisions of sections 242 to 260, inclusive. Failure of the employee to so answer and request hearing shall be considered a waiver of such right to hearing and the decision and action of the board subject to the provision of the following paragraph on such charges shall be final.

No employee on tenure shall be dismissed by the board for alleged inefficiency unless at least 90 school days shall have elapsed following notice to the employee under the provisions of the 2nd paragraph of this section whereby the employee may have an opportunity to correct said alleged inefficiency.

Sec. 249. Arrangement for hearing. The employee shall have the option of requesting hearing either before the board or the tenure commission herein created, but not before both bodies, and in accordance with the provisions of sections 242 to 260, inclusive.

In the event the employee requests hearing before the tenure commission, a copy of his request shall be sent to the secretary of the board, and the secretary shall prepare and forward to the tenure commission a certified copy of the charges as filed with said board.

Either the board or the tenure commission upon receipt of such request for hearing shall forthwith assign a time and place for such hearing within the municipality wherein the employee is serving but in no event sooner than 30 days from the time of receipt of such request for hearing and shall notify the employee, the board concerned and the complainant.

Pending hearing and final decision thereon the status of employee shall not be prejudiced; provided, however, that the board may suspend the employee without pay when said employee is charged with immorality, mental or physical disability and provided further, that if said employee is exonerated of the charges upon final determination he shall be paid all salary and other compensation which shall have accrued during the period of suspension. If the employee upon final determination is demoted or dismissed, payment of salary or other compensation which shall have accrued during the period of suspension shall be at the discretion of the board.

Sec. 250. Conduct of hearing. The hearing before the board or tenure commission shall be conducted in accordance with the following provisions.

- I. The hearing shall be public unless otherwise requested by the employee.
- II. The employee and the complainant shall each have the right to be heard in person, to be represented by freely selected counsel, to call witnesses, to examine and cross-examine such witnesses, to inspect all documentary evidence produced, and to present such other evidence as may be relevant to the matter under inquiry, provided that the burden of proof as defined in civil procedure in the state shall be upon the complainant.
- III. Rules of evidence pertaining to civil proceedings in the jurisdiction shall apply provided however that no evidence, other than regular school

records, relating to matters occurring more than 2 years prior to the date of the filing of the current charges, shall be admissible.

IV. The tenure commission or board shall have the power to subpoena witnesses and documentary evidence and shall exercise such power at the request of either side. If any person shall refuse to appear and testify in answer to such subpoena, either side may petition the appropriate court setting forth the facts, which court shall thereupon issue its subpoena to appear and testify before the said tenure commission or board. Any failure to obey such order of the court may be punished by the said court as contempt thereof, provided, however, that any fine imposed by the court as penalty shall be paid to the state and become a part of the general school fund.

V. All testimony shall be taken under oath or affirmation, to be administered by any member of the board or tenure commission under the authority hereby granted. Any person making a false oath or affirmation shall be guilty of perjury and punished accordingly.

VI. All action taken by the board or tenure commission shall be by a majority vote of all the members thereof, to be recorded by roll-call.

VII. The board or tenure commission shall empower its secretary to make a record of the full proceedings at the hearing, which record shall include all evidence oral and documentary and the decision and order of the board or tenure commission. Such secretary, within 5 days after the decision and order have been issued, shall send the employee and the complainant one copy each of the record, which shall be certified by the secretary and by the chairman of the tenure commission or board to be complete and correct.

VIII. Unless otherwise agreed to by both the employee and the complainant, the hearing shall be concluded within 20 days after its commencement.

IX. After each side has presented its case, as hereinbefore provided, and after a full and impartial consideration of the evidence adduced, the board or tenure commission, on the basis of such evidence and within 10 days after the conclusion of the hearing, shall render a decision in writing, ordering dismissal of the employee, demotion, suspension or dismissal of the charges.

X. No board or tenure commission member not present during the entire hearing shall participate in the reaching of the decision.



**Sec. 251. Appeals.** Any party to the proceeding aggrieved by the order of the board or the tenure commission shall have the right to appeal from said order and request a hearing de novo by the superior court within and for the county where the employee is serving; provided, however, that appeal shall be claimed in writing within 15 days after the receipt of the order mentioned in subsection IX of section 250 and copies of said appeal shall be sent to the secretaries of the board, tenure commission and to the complainant.

Upon receipt by the secretary of the body having issued the order, such secretary shall prepare a certified copy of the charges, and the employee's answer thereto and transmit the same to the clerk of the superior court for the county involved and if said appeal shall have been claimed not less than 5 days prior to the convention of said court, said secretary shall transmit the certified copies of papers required of him to said clerk to arrive not less than 48 hours before the time of the convention of said court and said appeal shall be in order for hearing at the incoming term as in civil appeals generally, and the cause may be disposed of under the laws and rules of court pertaining to civil cases.

In the event the issues of fact are submitted to a jury, the finding of the jury shall be limited to a pronouncement of "guilty" or "not guilty" of the charges prosecuted and the court shall render whatever decision it considers just, setting aside, amending or sustaining the order from which appeal was taken.

Appeal from the decision of the superior court may be taken by any of the complainants, the board or the employee, to the supreme judicial court in accordance with the laws and rules of court governing appeals in civil cases.

In all cases when upon final determination the employee is reinstated, the charges and all records pertaining to the hearing and determination thereof shall be destroyed.

**Sec. 252. Resignation.** No educational employee serving in a public school of an adopting municipality shall resign, except by mutual consent, without giving a written notice to the board concerned at least 30 days prior to the effective date of such resignation, but resignation in any other manner shall none the less terminate any contract between the said employee and the said board which may have been executed under the terms of sections 242 to 260, inclusive.

If a teacher resigns otherwise than in the manner provided herein the

commissioner shall have the power to suspend his certificate for a period of 1 year.

Sec. 253. Employees on leave of absence. All the provisions of sections 242 to 260, inclusive, applying to educational employees serving in the public schools of adopting municipalities shall be construed to apply to educational employees on leave of absence.

Sec. 254. Age limitations. The tenure rights of an employee on tenure shall lapse at the end of the school year during which he reaches the age of 65 years.

The tenure rights of an employee on tenure shall lapse at the end of the school year during which he reaches the age of 60 years if he is eligible for a pension under the provisions of the Maine state retirement system.

Sec. 255. Release of probationary employees. A probationary employee shall not be discharged during the school year except for the causes related for the dismissal of tenure employees.

The procedure for dismissing probationary employees during the school year shall be the same as that for dismissing employees on tenure.

Sec. 256. Consolidation of adopting municipalities. If a municipality "adopting" or otherwise or any part of a municipality "adopting" or otherwise becomes another municipality or a part of another adopting municipality by addition, consolidation, centralization, change in organization, or by any other means, all employees in the newly created municipality shall have the same tenure rights as if all their prior services in the theretofore existing municipality had been served continuously in an adopting municipality.

Sec. 257. Absence for illness or other just causes. An employee on tenure, who, by reason of illness or other just causes, is unable to continue in service and is absent from duty for a period of not more than 2 consecutive years shall retain the right of tenure.

Sec. 258. Status of teachers. The board shall, prior to the closing of the school year, prepare a list of probationary and tenure employees for the next succeeding year. The list shall be filed in the board offices and shall be open to public inspection at all reasonable hours.

The board shall keep the employee status list up to date throughout the school year.

**Sec. 259. Application to present employees.** Any employee who has served 3 years in his present municipality or whose present contract calls for additional service which together with past service in such municipality shall equal 3 years, shall be on tenure at the effective date of sections 242 to 260, inclusive, in the municipality where he is serving, unless the school committee refuses to renew his contract at its expiration by unanimous vote.

**Sec. 260. Creation of tenure commission.** Whenever a municipality shall adopt the provisions of sections 242 to 260, inclusive, a tenure commission shall be created from residents of said municipality, the same to consist of 3 members to be selected as follows: one to be appointed by the municipal officers, one to be appointed by the educational board and one to be appointed by the local teachers' association.

Such appointments shall be made within 60 days of the effective date of sections 242 to 260, inclusive, for the purpose of submitting it to vote under the local option provisions.

Said commission shall elect its chairman and secretary annually.

The term of office of all members of the tenure commission, except those appointed to the first tenure commission, shall be for a period of 3 years.

The members first appointed to the tenure commission shall determine by lot which shall serve for a period of 1, 2 and 3 years, respectively.

Any vacancy shall be filled for the unexpired term in the same manner as that used in the original appointment.'

**Sec. 2. Local option provision.** The aldermen of cities, the selectmen of towns and the assessors of plantations are empowered and directed to notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for the calling and holding of biennial meetings of said inhabitants for the election of senators and representatives, at the time of holding such biennial meeting to give their votes upon the following question:

“Shall the Teachers' Tenure Act be adopted?”

The secretary of state shall prepare and furnish to the several cities, towns and plantations ballots in manner and form as prescribed in chapter 5 of the revised statutes of 1944 for constitutional amendment or other questions, together with all such other forms including those for instructions and returns as are prescribed in said chapter 5.

The inhabitants of the several cities, towns and plantations shall vote

by ballot on said questions, those in favor voting "Yes" on their ballots and those opposed "No," and the ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and return made to the office of the secretary of state in the same manner as votes for governor and members of the legislature, and the governor and council shall canvass the same and the results shall be determined as provided in said chapter 5.

The provisions of sections 242 to 260, inclusive, shall take effect in the respective cities, towns and plantations whenever approved by a majority vote of the qualified voters within said voting district voting by ballot as above provided.