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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.

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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~~ 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~~ 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.

