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HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 955, L.D. 1407, Bill, "An Act To Require Screening and Testing for Illegal Substances of Beneficiaries under the Temporary Assistance for Needy Families Program"

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

'An Act To Require Screening and Testing for Illegal Substances of Beneficiaries under the Temporary Assistance for Needy Families Program, Legislators and Certain Appointed State Employees'

Amend the bill by striking out all of section 1 (page 1, lines 2 and 3 in L.D.) and inserting the following:

'Sec. 1. 3 MRSA §2, first ¶, as amended by PL 2011, c. 380, Pt. QQQQ, §1, is further amended to read:

Each member of the Senate and House of Representatives, beginning with the first Wednesday of December 2000 and thereafter, is entitled to \$10,815 in the first year and \$7,725 in the 2nd year of each biennium, except as provided in section 5 and except that if a Legislator who is a recipient of retirement benefits from the federal Social Security Administration files a written request with the Executive Director of the Legislative Council within one week after the biennium commences, the Legislator is entitled to \$9,270 in each year of the biennium. Each member of the Senate and the House of Representatives must receive a cost-of-living adjustment in annual legislative salary, except that the percentage increase may not exceed 5% in any year, and except that the percentage increase may not exceed 3% beginning with the fiscal year ending June 30, 2014. Beginning December 1, 2001, the salary for each legislative session must be adjusted each December 1st by the percentage change in the Consumer Price Index for the most recently concluded fiscal year; except that no member of the Senate or the House of Representatives may receive a cost-of-living adjustment in annual legislative salary for the Second Regular Session of the 124th Legislature, and except that no member of the Senate or the House of Representatives may receive a cost-of-living adjustment in annual legislative salary for the Second Regular Session of the 125th Legislature and the First Regular Session and the Second Regular Session of the 126th

COMMITTEE AMENDMENT

1 Legislature, and any percentage change in the Consumer Price Index for the fiscal years
2 ending June 30, 2011, June 30, 2012 and June 30, 2013 may not be applied to the base
3 salary. In addition, each Legislator is entitled to be paid for travel at each legislative
4 session once each week at the same rate per mile to and from that Legislator's place of
5 abode as state employees receive, the mileage to be determined by the most reasonable
6 direct route, except that Legislators may be reimbursed for tolls paid for travel on the
7 Maine Turnpike as long as they have a receipt for payment of the tolls, such tolls to be
8 reimbursed when Legislators use the Maine Turnpike in traveling to and from sessions of
9 the Legislature or in performance of duly authorized committee assignments. Each
10 Legislator is entitled to mileage on the first day of the session, and those amounts of
11 salary and expenses at such times as the Legislature may determine during the session,
12 and the balance at the end of the session.

13 **Sec. 2. 3 MRSA §5** is enacted to read:

14 **§5. Screening and testing for illegal substances**

15 The Legislative Council shall conduct screening and testing of Legislators for illegal
16 substances as described in this section.

17 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
18 following terms have the following meanings.

19 A. "Drug" means a controlled substance as defined in the federal Controlled
20 Substances Act, 21 United States Code, Section 802(6).

21 B. "Drug test" means a chemical test administered to determine the presence of a
22 drug or a drug's metabolites in a person's body fluids.

23 C. "Substance use disorder" means any diagnosable disorder characterized by a
24 cluster of cognitive, behavioral and physiological symptoms indicating that the
25 individual continues to use a substance despite significant substance-related problems
26 that is supported by the most current edition of the Diagnostic and Statistical Manual
27 of Mental Disorders, published by the American Psychiatric Association.

28 **2. Screening questionnaire.** Each member or member-elect of the Senate and
29 House of Representatives is required to complete a written screening questionnaire
30 designed to determine the likelihood of the member or member-elect having a substance
31 use disorder. The Legislative Council shall develop the questionnaire required under this
32 subsection and shall provide each member-elect with the questionnaire no later than 10
33 days prior to the convening of the Legislature following a general election. Each member
34 or member-elect must return the completed questionnaire to the Executive Director of the
35 Legislative Council no later than 10 days following the convening of the Legislature.

36 **3. Drug testing required.** If the results of a questionnaire required under subsection
37 2 indicate a reasonable likelihood, as determined by the Legislative Council, that the
38 member of the Senate or House of Representatives may have a substance use disorder
39 involving the misuse of a drug, the Legislative Council shall require the member to
40 submit to a drug test at the Legislative Council's expense in order for the member to
41 receive or continue to receive annual legislative salary payments under section 2.

1 **4. Failure to complete screening questionnaire or refusal to submit to drug**
2 **testing.** If a member of the Senate or House of Representatives fails to timely complete
3 the screening questionnaire provided under subsection 2 or refuses to take a drug test
4 required under subsection 3, the Executive Director of the Legislative Council shall
5 terminate the member's annual legislative salary payments under section 2 and shall
6 require the member to reimburse the State for any legislative salary payments made to
7 that member since the convening of the Legislature.

8 **5. Administration of drug testing.** A drug test required pursuant to subsection 3
9 must be administered with due regard to the privacy and dignity of the member of the
10 Senate or House of Representatives being tested. Before taking a required drug test, the
11 member may advise the person administering the test of any prescription or over-the-
12 counter medication the member is taking.

13 The Executive Director of the Legislative Council is authorized to enter into service
14 contracts to ensure accurate and appropriate screening and testing of members for illegal
15 substances under this section.

16 **6. Drug testing results.** This subsection governs drug testing results under this
17 section.

18 A. If a member of the Senate or House of Representatives tests negative for the
19 unlawful use of a drug, the member remains eligible for annual legislative salary
20 payments under section 2.

21 B. If a member of the Senate or House of Representatives tests positive for the
22 unlawful use of a drug, the member:

23 (1) Must be given a list of approved substance use disorder treatment providers
24 that are available in the area in which the member resides; and

25 (2) May receive or continue to receive annual legislative salary payments under
26 section 2 if the member enters into and follows the requirements of a substance
27 use disorder treatment plan, including:

28 (a) Receiving treatment from an approved substance use disorder treatment
29 provider for at least 90 days; and

30 (b) Testing negative for the unlawful use of a drug in drug testing required
31 by the Legislative Council during treatment and in a drug test to be given at
32 the conclusion of treatment.

33 C. If a member of the Senate or House of Representatives tests positive for the
34 unlawful use of a drug and declines to enter into a substance use disorder treatment
35 plan pursuant to paragraph B or if the member enters into but fails to meet a
36 requirement of the substance use disorder treatment plan, including the member's
37 refusal to take a drug test required by a substance use disorder treatment plan, or if
38 the member tests positive for the unlawful use of a drug in a drug test required by a
39 substance use disorder treatment plan, the Executive Director of the Legislative
40 Council shall terminate the member's annual legislative salary payments under
41 section 2 and shall require the member to reimburse the State for any legislative
42 salary payments made to that member since the convening of the Legislature.

1 The result of a drug test performed under this section is not a public record under Title 1,
2 chapter 13, subchapter 1 and disclosure to a 3rd party is prohibited.

3 **Sec. 3. 3 MRSA §162, sub-§18**, as amended by PL 1997, c. 43, §2, is further
4 amended to read:

5 **18. Out-of-state travel report.** To submit to the joint standing committee of the
6 Legislature having jurisdiction over appropriations and financial affairs a quarterly report
7 on out-of-state travel activity of the Legislature. The report must be submitted within 15
8 days after the end of each quarter and must include, for each individual who has been
9 authorized to travel, the destination, purpose and cost by funding source of each trip; ~~and~~

10 **Sec. 4. 3 MRSA §162, sub-§19**, as enacted by PL 1997, c. 43, §3, is amended to
11 read:

12 **19. Legislative information available through the Internet.** To make the
13 following information available through the Internet: legislative documents, committee
14 hearing schedules, work session schedules, status of legislation, voting records of
15 Legislators, the laws of Maine, study reports and reports of other study groups established
16 by the Legislature and any other information designated by the Legislative Council-; and

17 **Sec. 5. 3 MRSA §162, sub-§20** is enacted to read:

18 **20. Screening and testing for illegal substances.** To conduct screening and testing
19 of legislators for illegal substances in accordance with section 5.

20 **Sec. 6. 5 MRSA §3104, sub-§1, ¶¶H and I**, as enacted by PL 2011, c. 655, Pt.
21 DD, §5 and affected by §24, are amended to read:

22 H. Facilitate intergovernmental and intragovernmental coordination, relations and
23 communications and provide general coordination and review of plans in functional
24 areas of State Government as may be necessary for receipt of federal funds; ~~and~~

25 I. Perform other duties related to the purposes of the office under section 3102 as
26 assigned by the Governor or as directed by statute-; and

27 **Sec. 7. 5 MRSA §3104, sub-§1, ¶J** is enacted to read:

28 J. Conduct screening and testing of appointed state employees as defined in section
29 3109, subsection 1, paragraph A for illegal substances in accordance with section
30 3109.

31 **Sec. 8. 5 MRSA §3109** is enacted to read:

32 **§3109. Screening and testing for illegal substances**

33 The office shall conduct screening and testing of appointed state employees for
34 illegal substances as described in this section.

35 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
36 following terms have the following meanings.

37 A. "Appointed state employee" means a state employee appointed by the Governor,
38 with a salary subject to adjustment by the Governor, whose position is listed in Title
39 2, section 6.

1 B. "Drug" means a controlled substance as defined in the federal Controlled
2 Substances Act, 21 United States Code, Section 802(6).

3 C. "Drug test" means a chemical test administered to determine the presence of a
4 drug or a drug's metabolites in a person's body fluids

5 D. "Substance use disorder" means any diagnosable disorder characterized by a
6 cluster of cognitive, behavioral and physiological symptoms indicating that the
7 individual continues to use a substance despite significant substance-related problems
8 that is supported by the most current edition of the Diagnostic and Statistical Manual
9 of Mental Disorders, published by the American Psychiatric Association.

10 **2. Screening questionnaire.** Each appointed state employee is required to complete
11 a written screening questionnaire designed to determine the likelihood of the employee
12 having a substance use disorder. The office shall develop the questionnaire required
13 under this subsection and shall provide each appointed state employee with the
14 questionnaire no later than 10 days after the employee's appointment and on or before
15 July 1st of each year thereafter. Each appointed state employee must return the
16 completed questionnaire to the office no later than 30 days following receipt of the
17 questionnaire.

18 **3. Drug testing required.** If the results of a questionnaire required under subsection
19 2 indicates a reasonable likelihood, as determined by the office, that the appointed state
20 employee may have a substance use disorder involving the misuse of a drug, the office
21 shall require the employee to submit to a drug test at the office's expense.

22 **4. Failure to complete questionnaire or refusal to submit to drug testing.** If an
23 appointed state employee fails to timely complete the screening questionnaire provided
24 under subsection 2 or refuses to take a drug test required under subsection 3, the office
25 shall make a formal recommendation to the Governor that the employee be terminated or
26 otherwise reprimanded.

27 **5. Administration of drug testing.** A drug test required pursuant to subsection 3
28 must be administered with due regard to the privacy and dignity of the appointed state
29 employee being tested. Before taking a required drug test, the employee may advise the
30 person administering the test of any prescription or over-the-counter medication the
31 employee is taking.

32 The office is authorized to enter into service contracts to ensure accurate and appropriate
33 screening and testing of appointed state employees for illegal substances under this
34 section.

35 **6. Drug testing results.** This subsection governs testing results under this section.

36 A. If an appointed state employee tests negative for the unlawful use of a drug, the
37 office may take no further action under this section, except that the employee must be
38 required to yearly complete the screening questionnaire in accordance with
39 subsection 2 and may be required to submit to drug testing under subsection 3.

40 B. If an appointed state employee tests positive for the unlawful use of a drug, the
41 employee:

1 (1) Must be given a list of approved substance use disorder treatment providers
2 that are available in the area in which the employee resides; and

3 (2) Except for yearly screening and potential required drug testing under
4 subsections 2 and 3, the office may take no further action against the employee if
5 the employee enters into and follows the requirements of a substance use disorder
6 treatment plan, including:

7 (a) Receiving treatment from an approved substance use disorder treatment
8 provider for at least 90 days; and

9 (b) Testing negative for the unlawful use of a drug in drug testing required
10 by the office during treatment and in a drug test to be given at the conclusion
11 of treatment.

12 C. If an appointed state employee tests positive for the unlawful use of a drug and
13 declines to enter into a substance use disorder treatment plan pursuant to paragraph B
14 or if the employee enters into but fails to meet a requirement of the substance use
15 disorder treatment plan, including the employee's refusal to take a drug test required
16 by a substance use disorder treatment plan, or if the employee tests positive for the
17 unlawful use of a drug in a drug test required by a substance use disorder treatment
18 plan, the office shall make a formal recommendation to the Governor that the
19 employee be terminated or otherwise reprimanded.

20 The result of a drug test performed under this section is not a public record under Title 1,
21 chapter 13, subchapter 1 and disclosure to a 3rd party is prohibited.

22 **Sec. 9. 22 MRSA §3104, sub-§14**, as amended by PL 2009, c. 291, §2, is further
23 amended to read:

24 **14. Prohibition against denial of assistance based on drug conviction.** A person
25 who is otherwise eligible to receive food assistance under the federal Food Stamp Act of
26 1977, 7 United States Code, Sections 2011 to 2036 and under the federal Food and
27 Nutrition Act of 2008 may not be denied assistance because the person has been
28 convicted of a drug-related felony as described in the federal Personal Responsibility and
29 Work Opportunity Reconciliation Act of 1996, Public Law 104-193, Section 115, 110
30 Stat. 2105 unless that person is ineligible pursuant to subsection 15.

31 **Sec. 10. 22 MRSA §3104, sub-§15** is enacted to read:

32 **15. Drug screening and testing.** If a person who has been convicted of a drug-
33 related felony, as described in the federal Personal Responsibility and Work Opportunity
34 Reconciliation Act of 1996, Public Law 104-193, Section 115, 110 Stat. 2105, applies for
35 benefits under this section within 20 years of that person's date of conviction, the
36 department shall apply the screening and drug testing process developed for Temporary
37 assistance for Needy Families program recipients pursuant to section 3762, subsection 20.
38 If the person tests positive for the unlawful use of a drug and declines to enter into a
39 substance use disorder treatment plan pursuant to section 3762, subsection 20, paragraph
40 M or if the person enters into but fails to meet a requirement of a substance use disorder
41 treatment plan, including the person's refusal to take a drug test required by a substance
42 use disorder treatment plan, or if the person tests positive for the unlawful use of a drug in

1 a drug test required by a substance use disorder treatment plan, the department may no
2 longer provide food assistance under the federal Food Stamp Act of 1977, Section 2011
3 et seq. and the person may not reapply at any time.'

4 Amend the bill by striking out all of section 3 (page 1, line 14 in L.D.)

5 Amend the bill in section 4 in subsection 20 by inserting after paragraph N the
6 following:

7 'O. Notwithstanding paragraph N, if an adult applicant for or an adult recipient of
8 TANF benefits who has been convicted of a drug-related felony, as described in
9 Section 115 of PRWORA, declines within 20 years of that person's date of conviction
10 to enter into a substance use disorder treatment plan pursuant to paragraph M or if the
11 person enters into but fails to meet a requirement of a substance use disorder
12 treatment plan, including the person's refusal to take a drug test required by a
13 substance use disorder treatment plan, or if the person tests positive for the unlawful
14 use of a drug in a drug test required by a substance use disorder treatment plan, the
15 department may not provide or shall terminate cash assistance for the person, and the
16 person may not reapply for cash assistance.'

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

19 SUMMARY

20 This amendment, which is a minority report of the committee, makes the following
21 changes to the bill:

22 1. It removes the sections of the bill that repeal provisions that prohibit the State's
23 denying food assistance and Temporary Assistance for Needy Families, or TANF,
24 benefits to a person who has been convicted of a drug-related felony. It specifies that a
25 person receiving TANF benefits who has been convicted of a drug-related felony and is
26 within 20 years of that person's date of conviction is not able to reapply for cash
27 assistance if the person fails a drug test and declines to enter a treatment plan or fails to
28 meet the requirements of the treatment plan. It requires the Department of Health and
29 Human Services to apply the same process to a person receiving food benefits who was
30 convicted of a drug-related felony within 20 years of that person's date of conviction.

31 2. It requires the Legislative Council to conduct screening and testing of Legislators
32 for illegal substances. If a Legislator is required to submit to drug testing and refuses, or
33 if the Legislator tests positive for the unlawful use of a drug and refuses to enter into a
34 substance use disorder treatment plan or enters into a substance use disorder treatment
35 plan and fails to meet a requirement of the plan, the Legislator is ineligible for annual
36 legislative salary payments and must reimburse the State for any salary payments made to
37 the Legislator since the convening of the Legislature.

38 3. It requires the Governor's Office of Policy and Management to conduct yearly
39 screening and testing of certain appointed state employees for illegal substances. If an
40 appointed state employee is required to submit to drug testing and refuses, or if the
41 employee tests positive for the unlawful use of a drug and refuses to enter into a
42 substance use disorder treatment plan or enters into a substance use disorder treatment

1 plan and fails to meet a requirement of the plan, the office is required to make a formal
2 recommendation to the Governor that the employee be terminated or otherwise
3 reprimanded.