

LD 375 An Act To Create Greater Accountability in the Office of County Sheriff

To: Members, Joint Standing Committee on State and Local Government

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SUMMARY

This bill creates an additional process for county commissioners to use when a majority of the commissioners find the county sheriff has “not faithfully or efficiently performed any duty imposed by this chapter or that the sheriff is improperly exercising or acting outside the sheriff’s authority.”¹

The bill sets out this additional process in new subsections 2 and 3 of the bill.² The new process requires the county commissioners to also file the complaint with the appropriate Superior Court and provide notice to the sheriff. The court is required to schedule a hearing at which the commissioners are required to present their case with affidavits or other evidence. The sheriff has the opportunity to rebut the allegations through affidavits or other evidence.

If the court finds sufficient cause, the court may place the sheriff on administrative leave with pay and is required to forward the complaint to the Governor for review.

If the court determines the matter requires more investigation, the court may refer the matter to the Attorney General with instructions to report back to the court or to forward the results of the investigation to the Governor.

TESTIMONYⁱ**Sponsor:** Senator Keim:

- Recent incidents with former Oxford County Sheriff;
- destroyed records while in office;
- Governor did not investigate or remove from office;
- Currently no mechanism to place on administrative leave (with or without pay) during investigation

Proponents: Maine Sheriff’s Association by President Sheriff Troy Morton; ACLU of Maine by Chief Counsel Zachary Heiden; Oxford County Commissioners by David Duguay; Jeffrey Kerr, Board of Visitors; written only: Maine Chiefs of Police Association by First VP, Chief Jared Mills (Augusta Chief of Police); Maine County Commissioners Association, by President Stephen Gorden)

Opponents: none

¹ The current statute permits the county commissioners to file a complaint with the Governor and request the Governor remove the sheriff and appoint another .

² Subsection 1 of the bill is nearly identical to current law; it adds the language “such as gross deviation in ethical behavior or engaging in criminal conduct”

NFNA (Maine Judicial Branch, Julia Finn; written only: Daria Cullen; Michael Mosley; Rebekah Quere; Delilhah Poupore; Sandra Katz)

- unambiguous constitutional language gives governor power to remove;
- potential constitutional separation of powers issues is court is involved in removal process;
- Judicial branch willing to work on language to address constitutional impediments;
- Remove Judicial branch from process

PRIOR SESSION

In the 129th Legislature, the SLG committee considered, LD 453, An Act to Ensure the Integrity and Accountability of Persons Who Are Elected to Public Office. This concept draft, which was opposed by the Maine Sheriff's Association, was worked over several meetings. It was reported out of committee ONTP(10) / OTPA(3). The minority report gave the Governor the authority to suspend the sheriff until the Governor either removed the sheriff or dismissed the complaint.

POTENTIAL MATTERS FOR DISCUSSION

1. Constitutional separation of powers issue?
2. What mechanisms will court follow?
3. How is notice given to the sheriff?

FISCAL IMPACT - Preliminary (OFPR)

None provided as of this date.

CURRENT STATUTE30-A MRSA §441. Removal of sheriff

Whenever the county commissioners find that the sheriff is not faithfully or efficiently performing any duty imposed by this chapter or that the sheriff is improperly exercising or acting outside the sheriff's authority, the commissioners may file a complaint with the Governor describing in detail the facts of those actions or omissions and requesting the Governor to remove the sheriff from office and appoint another sheriff in that office for the remainder of the term.

PL 1987, c. 737, Pt. A, §2 (NEW); PL 1987, c. 737, Pt. C, §106 (NEW); PL 1989, c. 6 (AMD); PL 1989, c. 9, §2 (AMD); PL 1989, c. 104, Pt. C, §§8, 10 (AMD).

MAINE CONSTITUTION, ART IX, SECTION 10Section 10. Removal of sheriffs from office and replacement.

Whenever the Governor upon complaint, due notice and hearing shall find that a sheriff is not faithfully or efficiently performing any duty imposed upon the sheriff by law, the Governor may remove such sheriff from office and appoint another sheriff to serve for the remainder of the term for which such removed sheriff was elected. All vacancies in the office of sheriff, other than those caused by removal in the manner aforesaid shall be filled in the same manner as is provided in the case of judges and registers of probate.

ⁱ The section is not intended to reflect all comments and may include unintentionally errors.