

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIRST LEGISLATURE

Legislative Document

No. 801

H. P. 544

House of Representatives, January 30, 1963

Referred to Committee on Judiciary. Sent up for concurrence and 1000 ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Jalbert of Lewiston.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-THREE

AN ACT Relating to Establishment of a Personnel Law for Certain Employees of the City of Lewiston.

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

Sec. 1. P. & S. L., 1939, c. 8, Art. XVII, additional. Chapter 8 of the private and special laws of 1939, as amended, is further amended by adding thereto a new article to read as follows:

'ARTICLE XVII

Personnel Law

Sec. 1. Members of personnel board. A personnel board consisting of 5 members is established. Three members shall be appointed by the mayor for a term of 3 years or until their successors have been appointed and qualified; save that of those first appointed, one shall be appointed to serve for one year, one for 2 years, and one for 3 years. One member, who shall be a classified service employee, shall be elected by the Employees Civil Service Association for a term of one year and shall not come from the same administrative department for 2 successive years. One member shall be classified service employee and shall be elected by a majority vote of the other members annually at their first meeting for a term of one year and shall not come from the same administrative department for 2 successive years. The 2 last-mentioned members shall not come from the same administrative department in any one year. No appointee of the mayor shall be reappointed to office sooner than one year after the expiration of his term, except that this provision shall not apply to the initial terms of those members appointed for 2 and one years, respectively.

Sec. 2. Compensation. The members of the personnel board shall serve without compensation.

Sec. 3. Vacancies. A vacancy occurring in the personnel board shall be filled by the proper appointing or electing authority for the unexpired term provided, if no appointment or election be made by the end of the 30th day after a vacancy occurs, same shall be filled by the remaining members of the personnel board.

Sec. 4. Board affairs. The personnel board shall keep complete minutes of its proceedings, which shall be open to public inspection. It shall meet in the council room, act by a majority vote of its full membership, and elect its own chairman. All records of the personnel board shall be lodged with the city clerk.

Sec. 5. Examinations. The personnel board shall prescribe and administer competitive entrance and promotion examinations to determine the fitness of applicants to perform the duties of the classified service positions for which they apply. Such examinations, if written, shall be professionally prepared and may also include oral, physical or performance tests singly or in any combination.

Sec. 6. Eligible lists. The personnel board shall prepare an eligible list for each position in the classified service as occasion shall require. Each eligible list shall name those persons who have shown by competitive examinations, experience, aptitude, education, character and physical fitness that they possess the qualifications for appointment to such position in order of their ratings. The personnel board shall add credits for seniority to the grade achieved in such examination according to the hereinafter established schedule. The personnel board shall, upon request, advise any person taking such an examination of his final rating and of his relative standing on the eligible list, if any.

Sec. 7. Consultants and clerk. The personnel board may, from time to time as its needs shall require, retain the services of a professional consultant in assisting in the preparation and evaluation of examinations given by it. It may, if its needs so require and with the approval of the Board of Finance, retain part-time clerical assistance.

Sec. 8. Classified service. The classified service shall at any time comprise all full-time employees of this city, except:

- I. Elected officials, members of boards and commissions, and the corporation counsel.
- II. All physicians and surgeons rendering professional services to this city.
- III. Members of the police department other than civilian clerks, and the sealer of weights and measures.
- IV. Members of the fire department other than civilian clerks.
- V. Certified teaching personnel of the Department of Education.
- VI. The building, electrical, steam and plumbing inspectors and the high pressure vessel examining officer.

VII. The industrial agent, the director of civil defense and the welfare store manager.

VIII. The city clerk and members of the board of voter registration.

Sec. 9. Tenure. Each position in the classified service shall be a career position entitling the holder, following a probationary period, to retain same until retirement, subject, however, to the needs of this city and to dismissal, suspension or demotion as provided in this Law.

Sec. 10. Status of present employees. All employees of this city holding positions brought into the classified service by this act shall be continued in their positions without examination or probationary period.

Sec. 11. Appointments and promotions.

I. No person shall be appointed to the classified service and no classified service employee shall be promoted, demoted, suspended or dismissed in any manner other than that prescribed by this law.

II. Appointments to, and promotions in, the classified service shall be made by the respective boards and commissions according to merit and fitness from the eligible lists.

III. Vacancies in a higher position in the classified service shall, as far as practicable, be filled from a lower class when an eligible list prepared for that position contains the name of a classified service employee possessing the qualifications for such appointment.

Sec. 12. Seniority. Credit for seniority, computed as of the date of examination, shall be obtained by adding to a passing grade achieved in such examination one point for each full year of service for the first 10 years.

Sec. 13. Dismissal, disciplinary action and violation of rights.

I. A classified service employee may be dismissed, suspended, demoted or otherwise disciplined for cause.

II. In each such case, and in each case of an alleged violation of the rights granted by this law, the employee may, within 3 days of such action, file an informal written statement with his employing board or commission containing his complaints and requesting an informal hearing. Same may be public or private at the option of the employee and shall immediately follow the board or commission's second regular meeting held after the date of filing. The decision of the board or commission shall be made known to the employee within 3 days of the hearing. At the request of the employee, the personnel board shall then investigate such action, hold formal hearings relating thereto, and if it shall find the charges against him unwarranted or his rights violated, shall order his immediate reinstatement with no loss of pay or seniority, or shall order the full restitution of other rights.

III. The complaining employee shall file his request for a formal hearing, in writing, with the city clerk in behalf of the personnel board, within 3 days of notification of the informal hearing decision. The personnel board shall

hold its hearing within 10 days of the receipt of such request by the city clerk. The personnel board shall, by registered mail, notify the employee and the respective board or commission involved of the time and place. The hearing may be public at the option of the employee. Both the employee and the board or commission may be represented by counsel or other person of their choice. Technical rules of evidence shall not apply, and a transcript need not be made of the proceedings. After hearing and considering the evidence, the personnel board shall promptly file a written statement containing its findings and order with the city clerk as a public record. A copy of the statement shall be delivered to the employee and the respective board or commission.

IV. The complaining employee may appeal the order to the Superior Court within 5 days of his receipt of same. Notice of the appeal shall be ordered by the court and same shall be tried and determined by it without a jury in the manner of and with the rights provided by law in other civil actions so heard.

Sec. 14. Employees in military service. Whenever a classified service employee shall in time of war or state of emergency enlist, be called or ordered, or be drafted into the armed forces of the United States or branch thereof, or shall be drafted under federal man power regulations, he shall not be deemed to have abandoned his employment nor shall he be removed therefrom. He shall be considered to be on leave of absence without pay and shall continue to accrue seniority credits if he returns to the classified service within 90 days of the date of his military discharge unless he is then receiving treatment in a hospital for a service incurred disability. In the latter event, he shall return to the classified service within 30 days of the date of his hospital discharge. The provisions of this section shall also apply to any such employee entering the armed forces of the United States under the provisions of the Selective Service Act of 1948, or any amendment or extension thereof.

Sec. 15. Emergency appointments. Any of the respective boards or commissions may, in the event of a vacancy in a position in the classified service, fill same in its own discretion on an emergency basis only until it has been supplied with an eligible list for such position by the personnel board.

Sec. 16. Employees civil service association. An Employees Civil Service Association is hereby established. Every classified service employee shall be a member of same. It shall adopt its own bylaws and shall exist at no expense to this city.

Sec. 17. Interim personnel board. Notwithstanding the provisions of section 1, the first appointments and election to the personnel board shall be made by the proper authorities for that interval of time commencing with the effective date of this act and terminating with the next subsequent municipal inauguration day. On that day the schedule of terms of appointment and election specified in section 1 shall first be used.'

Sec. 2. P. & S. L., 1939, c. 8, Art. VIII, § 12, amended. Section 12 of Article VIII of chapter 8 of the private and special laws of 1939, as amended, is further amended to read as follows :

Sec. 12. Appointments. They shall appoint a controller who shall be the executive officer and clerk of the board; a collector of taxes and a city treasurer both of which offices may be held by the same person; and a chief auditor; ~~all of which appointments shall be for one year or until their respective successors are appointed and qualified.~~ They shall also appoint a board of assessors of 3 members ~~whose term shall be 3 years save that when appointing the first board, they shall designate the member whose term shall expire at the expiration of each period of one year for 3 years thereafter,~~ provided that in the first instance a board of assessors shall not be appointed until the then existing board of assessors shall have completed the assessment of taxes for the current year and shall have issued their warrant of commitment as provided by section 81 of chapter 13 of the Revised Statutes of Maine of 1930. The assessors shall make report to the board of finance at least once a month of all abatement of taxes by them granted. Vacancies occurring in any of the offices so appointed shall be filled by appointment by the board of finance for the unexpired term. They shall have authority to employ such clerical or other assistants as may be required for the administration of the affairs of their office, prescribe their duties, fix their compensation, and, **except as provided for in Article XVII**, terminate their employment at pleasure.

The board of finance shall appoint a full-time civil engineer, who shall be subject to the authority of said board. The board of finance shall prescribe his duties and assign him to any department of the city for such time or times and under such rules and regulations as they may order, **and fix his compensation and terminate his employment at pleasure.**

The board of finance may appoint a full-time industrial agent who may be paid an annual salary or granted an annual contract. The duties of the industrial agent shall be to promote the industrial development effort of the City of Lewiston by rendering assistance to the problems of existing industries and in soliciting industrial prospects for location and expansion within the city in cooperation with citizens' groups, service organizations, chamber of commerce, municipal departments and officials. The board of finance is authorized to pay the actual expenses of the industrial agent in performance of his official duties, and shall receive written monthly reports of the activities of the industrial agent, copy of which shall forthwith be forwarded to the mayor.'

Sec. 3. P. & S. L., 1939, c. 8, Art. X, § 4, amended. Section 4 of Article X of chapter 8 of the private and special laws of 1939, as amended, is further amended to read as follows:

Sec. 4. Employees. The board shall have full power and authority to employ such superintendents, engineers, inspectors, foremen, agents and employees as may be required for the administration of the affairs of the department, prescribe their duties, set their compensation subject to the approval of the board of finance, and, **except as provided for in Article XVII**, terminate their employment at pleasure.'

Sec. 4. P. & S. L., 1939, c. 8, Art. XI, § 1, amended. The 3rd sentence of section 1 of Article XI of chapter 8 of the private and special laws of 1939, as

enacted by section 1 of chapter 95 of the private and special laws of 1947, is amended to read as follows :

'The commission may employ such other employees of the department as it shall deem necessary, prescribe their duties, set their compensation subject to the approval of the board of finance, and, **except as provided for in Article XVII**, terminate their employment at pleasure.'

Sec. 5. P. & S. L., 1939, c. 8, Art. XI, § 20, amended. Section 20 of Article XI of chapter 8 of the private and special laws of 1939 is amended to read as follows :

'**Sec. 20. Enforcement of traffic laws; sealer of weights and measures; term of office; salary.** The commission shall be charged with the enforcement of all laws and ordinances relative to the regulation of traffic and to the subject of weights and measures and shall appoint a sealer of weights and measures ~~for the term of 7 year~~ and fix his compensation.'

Sec. 6. P. & S. L., 1939, c. 8, Art. XII, § 4, amended. The first sentence of section 4 of Article XII of chapter 8 of the private and special laws of 1939, as repealed and replaced by chapter 44 of the private and special laws of 1945, is amended to read as follows :

'The commission may employ a chief fire department engineer, a superintendent of fire alarm, such assistant fire department engineers and such other officers, members and employees of the department as they shall deem necessary, shall direct their organization, prescribe their duties, set their compensation subject to the approval of the board of finance, and, **except as provided for in Article XVII**, terminate their employment at pleasure; save that the chief fire department engineer, assistant fire department engineer and other permanent members of the department shall not be demoted nor removed unless for inefficiency or other cause detrimental to the service of the department and after hearing.'

Sec. 7. P. & S. L., 1939, c. 8, Art. XIII, § 4, amended. Section 4 of Article XIII of chapter 8 of the private and special laws of 1939, as repealed and replaced by section 24 of chapter 86 of the private and special laws of 1943, is amended to read as follows :

'**Sec. 4. Officers, agents and employees.** They may employ a superintendent of schools and such janitors, truant officers, directors of recreational activities and other agents and employees as they may deem necessary, prescribe their duties, set their compensation subject to the approval of the board of finance, and, **except as provided for in Article XVII**, terminate their employment at pleasure.'

Sec. 8. P. & S. L., 1939, c. 8, Art. XIV, § 2, amended. The first sentence of Section 2 of Article XIV of chapter 8 of the private and special laws of 1939 is amended to read as follows :

'The board of health and welfare shall appoint a health officer ~~for a term of 3 years~~, subject to the approval of the state commissioner of health and welfare as now provided by law.'

Sec. 9. P. & S. L., 1939, c. 8, Art. XIV, § 6, amended. The first sentence of section 6 of Article XIV of chapter 8 of the private and special laws of 1939, as repealed and replaced by section 26 of chapter 86 of the private and special laws of 1943, is amended to read as follows:

'They may employ such superintendents, inspectors, foremen, and employees as may be required for the administration of the affairs of the department, prescribe their duties, set their compensation subject to the approval of the board of finance, and, **except as provided for in Article XVII**, terminate their employment at pleasure.'

Sec. 10. P. & S. L., 1939, c. 8, Art. XVI, § 2, amended. The first sentence of Section 2 of Article XVI of chapter 8 of the private and special laws of 1939 is amended to read as follows:

'Not more than 3 members of the board of finance or of any departmental board of 5, **other than the personnel board**, shall be registered in the same political party at the time of appointment and not more than 2 members of any such commission of 3 shall be so registered, provided, however, that a majority of every said board to be appointed by the mayor shall be chosen from those enrolled as members of that party in said City of Lewiston which polled the plurality of votes in said city, for Governor, in the last gubernatorial election preceding the date of appointment.'

Referendum; effective date; certificate to Secretary of State. This act shall take effect 90 days after adjournment of the Legislature, only for the purpose of permitting its submission to the legal voters of the City of Lewiston at the next regular municipal election in the City of Lewiston or at the next general state-wide election, whichever occurs first.

The city clerk shall prepare the required ballots on which he shall reduce the subject matter of this act to the following question: "Shall the Act Relating to Establishment of a Personnel Law for Certain Employees of the City of Lewiston, passed by the 101st Legislature, be accepted?" The voters shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same.

This act shall take effect for all purposes hereof upon its acceptance by a majority vote of the legal voters voting at said election; provided that the total number of votes cast for and against the acceptance of this act at said election equals or exceeds 20% of the total vote for all candidates for Governor in said city at the next preceding gubernatorial election.

The result of such election shall be declared by the municipal officers of the City of Lewiston and due certificate thereof shall be filed by the city clerk with the Secretary of State.