

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 801**

H. P. 687

House of Representatives, February 11, 1981

Referred to the Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Kany of Waterville.

Cosponsor: Representative P. Paradis of Augusta.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT to Revise the State Personnel System.**

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

Sec. 1. 5 MRSA § 551-A is enacted to read:

**§ 551-A. Purpose**

Every employee of the Department of Personnel and any other affected State agency shall act to assure that the provisions of the Personnel Law are carried out in an open, fair and expeditious manner, with the objective of hiring and retaining the best person for a position as quickly as possible. To this end, all state agencies shall take steps to speed up handling of matters subject to, and to reduce and simplify the procedures and paperwork required by, the Personnel Law.

Sec. 2. 5 MRSA § 556, as last amended by PL 1979, c. 127, § 30, is repealed and the following enacted in its place:

**§ 556. Citizenship**

Employee holding technical or professional positions involving formulation, execution or review of broad public policy shall be citizens of the United States of America. This requirement may be waived by the State Personnel Board on an individual basis when there exist compelling reasons for the waiver.

Sec. 3. 5 MRSA § 557, as last amended by PL 1979, c. 541, Pt. A, § 26, is repealed and the following enacted in its place:

**§ 557. Compulsory consideration of experience**

No application for a position in State Government shall be rejected solely because the applicant lacks educational qualifications. Acceptable equivalent combinations of appropriate experience, including verifiable uncompensated experience, or education may be substituted for formal educational qualifications, except where the educational qualifications are reflected in necessary registrations such as to practice law, medicine or engineering or where the educational requirements are set as standards by federal agencies making grants-in-aid or otherwise contributing to state programs. The commissioner shall by rule adopt standards and procedures to assure implementation of this paragraph.

Sec. 4. 5 MRSA § 591, as amended by PL 1975, c. 771, § 53, is repealed and the following enacted in its place:

**§ 591. Membership; term; compensation**

The State Personnel Board, as established, shall be composed of 5 members. No more than 3 members of the board shall be of the same political party. One member shall be a lawyer; another member shall have experience in private sector personnel management and labor relations. At least one member shall have a background indicating a capacity to mediate grievances between labor and management. No member shall be a state employee.

Each member shall be appointed by the Governor subject to review by the Joint Standing Committee on Labor and to confirmation by the Legislature.

One member of the board shall be designated by the Governor as chairman. Except as otherwise provided by law, each member shall be appointed for a term of 4 years and until his successor has been appointed and qualified. Any vacancy shall be filled for the unexpired portion of the term by the Governor, subject to review by the Joint Standing Committee on Labor and to confirmation by the Legislature.

The members of the board shall receive \$50 a day for the time actually spent in the discharge of their duties and their necessary expenses.

Sec. 5. 5 MRSA § 592, as last repealed and replaced by PL 1977, c. 78, § 12, is amended by adding at the end a new paragraph to read:

The board shall serve as an appeal board for state employees, pursuant to chapter 63.

Sec. 6. 5 MRSA § 631, first ¶, 2nd sentence, as repealed and replaced by PL 1979, c. 127, § 31, is amended to read:

~~After consultation with the Personnel Board, the~~ The Governor shall appoint, subject to review by the Joint Standing Committee on State Government and to

confirmation by the Legislature, the Commissioner of Personnel who shall serve a term coterminous with that of the Governor or until his successor has been appointed and qualified.

**Sec. 7. 5 MRSA § 631, sub-§ 7, as amended by PL 1975, c. 766, § 4, is further amended to read:**

**7. Organization and decentralization.** To organize the department and separate it into such divisions and along such functional lines as the commissioner may deem most efficient and ~~may~~ to decentralize the functions of personnel management among the various departments and agencies of the State **consistent with the requirements of section 551-A and as he deems deemed** in the best interest of efficient administration, and to perform those functions which are not decentralized.

**Sec. 8. 5 MRSA § 631, sub-§ 8 is enacted to read:**

**8. Collective bargaining.** Under the direction of the Governor and subject to chapter 55-A, to bargain collectively for the State.

**Sec. 9. 5 MRSA § 642 is enacted to read:**

**§ 642. Employee suggestion award program**

**1. Purpose.** The employee suggestion award program is established to authorize that cash or honorary awards be made to state employees whose adopted suggestions will result in substantial savings or improvement in state operations.

**2. Employee suggestion award board.** The employee suggestion award board shall be composed of the Commissioner of Finance and Administration; the Commissioner of Personnel; and one other commissioner of a state department and 2 state employees to be appointed by the Governor.

The board shall elect a chairman and secretary, and shall adopt rules governing the proceedings, including criteria for making awards.

No later than March 1st of each year, the board shall submit to the Legislature a report of its activities for the preceding calendar year, including information on the number and nature of suggestions received and awards made.

**3. Employee positions excluded.** In establishing criteria for making awards, the board may exclude management levels of positions from participation in the program, but in no event shall the following levels of management be eligible to receive cash awards under the program:

**A. The governor's staff, a department commissioner or equivalent;**

**B. An assistant, associate or deputy commissioner, an assistant to a commissioner, any major fiscal and administrative department staff or equivalent; and**

**C. A director or division chief or the head of a major department function or equivalent.**

**4. Considerations in making an award. In considering a suggestion, the board shall:**

**A. Satisfy itself that the claimed saving or improvement is real and not merely apparent, and that it is not, in whole or in part, the result of:**

- (1) Chance;**
- (2) A lowering of the quality of the service rendered;**
- (3) Reduced pass-through or transfer expenditures;**
- (4) Receipts realized in excess of amounts budgeted;**
- (5) Nonrecurrence of expenditures which were single outlay, or one-time expenditures, in the preceding fiscal year;**
- (6) Failure to reward deserving employees through promotions, reclassification, award of merit salary increments or salary increases authorized by salary range revisions;**
- (7) Postponement of normal purchases or repairs to a future fiscal year;**
- (8) Stockpiling inventories in the immediately preceding fiscal year so as to reduce requirements in the eligible fiscal year;**
- (9) Substitution of federal funds, other receipts or nonstate funds for state appropriations;**
- (10) Unreasonable postponement of payments of accounts payable until the fiscal year immediately following the eligible fiscal year;**
- (11) Shifting of expenses to another unit of government; or**
- (12) Any other practice, event, or device which the board decides has caused a distortion which makes it falsely appear that a savings or increase in level of services has occurred; and**

**B. Consider as legitimate savings or improvements those reductions in expenditures made possible by such achievements as the following:**

- (1) Reductions in overtime;**
- (2) Elimination of consultant fees;**
- (3) Reduction in temporary help;**
- (4) Elimination of budgeted positions;**
- (5) Improvement of communication;**
- (6) Improvement of systems and procedures;**

- (7) Better deployment and utilization of manpower;
- (8) Elimination of unnecessary travel;
- (9) Elimination of unnecessary printing and mailing;
- (10) Elimination of unnecessary payments for advertising, memberships, dues, subscriptions and the like;
- (11) Elimination of waste, duplication and operations of doubtful value;
- (12) Improvement of space utilization; and
- (13) Any other achievements considered by the board as representing true savings or improved operations.

5. **Maximum cash award.** The maximum cash award approved may be limited to 10% of the first year's estimated savings, or \$2,000, whichever is less. Any cash awards approved by the board shall be charged against the fund or funds to which estimated savings apply. If it is not possible to reasonably estimate the savings, the board may pay an initial amount and pay an additional amount at the end of the first year, or may pay the full amount at the end of the first year.

Sec. 10. 5 MRS c. 55-A is enacted to read:

#### **CHAPTER 55-A**

#### **OFFICE OF EMPLOYEE RELATIONS**

##### **§ 651. Policy**

It is the policy of the State to allow by law state employees to voluntarily join, form and participate in employee organizations of their own choosing for the purpose of collective bargaining. Further, it is state policy to ensure that the best interest of all citizens, including state employees, are served by active and positive managerial involvement in the collective bargaining process.

The purpose of this chapter is to create clear lines of responsibility and authority for the implementation and execution of the state's employee relations policy within the Executive Branch of State Government.

##### **§ 652. Office of Employee Relations**

The Office of Employee Relations is created within the Department of Personnel. The office shall be headed by a Director of Employee Relations appointed by the commissioner with the approval of the Governor. The director shall be subject to the supervision and direction of the commissioner, and shall serve as the commissioner's designee for carrying out the functions of the employer under the State Employees Labor Relations Act, and for any other duties assigned by the commissioner. The director may appoint such other employees as may be needed for the performance of his duties, and may prescribe their powers and duties and fix their compensation. These employees shall not be subject to the Personnel Law.

**§ 653. Duties**

The Office of Employee Relations may:

1. **Develop policies.** Develop and execute employee relations policies, objectives and strategies consistent with the overall objectives of the Governor;
2. **Negotiate.** Conduct negotiations with certified and recognized bargaining agents under applicable statutes;
3. **Administer agreements.** Administer and interpret collective bargaining agreements, and coordinate and direct agency activities as necessary to promote consistent policies and practices;
4. **Represent State.** Represent the State in all bargaining unit determinations, elections, prohibited practice complaints and any other proceedings growing out of employee relations and collective bargaining activities;
5. **Coordinate efforts.** Coordinate the compilation of all data and information needed for the development and evaluation of employee relations programs and in the conduct of negotiations;
6. **Coordinate resources.** Coordinate the state's resources as needed to represent the State in negotiations, mediation, fact finding, arbitration and other proceedings; and
7. **Provide advice.** Provide staff advice on employees relations to the various departments and agencies of State Government, including providing for necessary supervisory and managerial training.

**§ 654. Cooperation**

All state departments and agencies shall provide such assistance, services and information as required by the Director of Employee Relations, and shall take such administrative or other action as may be necessary to implement and administer the provisions of any binding agreement between the State and employee organizations entered into under law.

**§ 655. Governor to choose bargaining agent**

Notwithstanding section 651, subsection 2 or any other law, the Governor may at any time appoint the bargaining agent for the State, who may be in state service or not in state service.

Sec. 11. 5 MRSA c. 63, first two lines, as enacted by PL 1967, c. 539, § 1, are repealed and the following enacted in its place:

**CHAPTER 63****STATE EMPLOYEES APPEALS**

Sec. 12. 5 MRSA § 751, first ¶, as repealed and replaced by PL 1975, c. 771, § 57, is repealed and the following enacted in its place:

**The State Personnel Board shall administer this chapter. Whenever it so administers, it shall be an impartial board of arbitration.**

**Sec. 13. Transitional provisions for State Personnel Board and State Employees Appeals Board.** The terms of the members of the State Personnel Board and of the State Employees Appeals Board shall expire on December 31, 1981. The initial 5 appointments by the Governor to the Personnel Board established January 1, 1982 shall be as follows: 2 members shall be appointed for 2 years, 2 members shall be appointed for 3 years and one member shall be for 4 years. Subsequent appointments shall be as provided in section 591.

**Sec. 14. Effective dates.** Sections 4, 11 and 12 shall take effect on January 1, 1982.

### STATEMENT OF FACT

This bill contains 7 recommendations.

1. Sections one and 7 require that action by the Department of Personnel and state agencies required by the Personnel Law shall be carried out in an open, fair and expeditious manner, with the objective of hiring and retaining the best person for a position as quickly as possible. The purpose of these changes is to reduce the paperwork and time in the handling of personnel actions, including the paperwork and waiting time required of job applicants.

2. Sections 2 and 3 abolish the residency preference for employment with the State, because it is unconstitutional. It also strengthens and makes compulsory the current law that discourages "credentialism."

3. Sections 4, 11, 12, and 14 abolish the old State Personnel Board and State Employees Appeals Board, and replaces them with a new State Personnel Board of 5 members. The new board will be responsible for the duties of both of the abolished boards. This is to provide a smaller, stream-lined board and to recognize that the workload of the Employees Appeals Board has been substantially reduced due to collective bargaining.

4. Section 6 deletes the requirement that the Governor shall consult with the Personnel Board in appointing the Commissioner of Personnel.

5. Section 7 changes the law to require, rather than permit, decentralization of personnel functions from the Department of Personnel to the line departments and agencies, where such decentralization is desirable.

6. Sections 8, 10, 11 and 12 establish the office of Employee Relations by statute, it is now established by Executive Order of the Governor, and places the office in the Department of Personnel. The office will be headed by a director, who will be responsible to the Commissioner of Personnel. This is to avoid duplication and confusion over the roles and responsibilities of the 2 organizations by providing one focal point for labor-management relations.



7. Section 9 establishes an employee suggestion award program, to provide cash and other awards for suggestions made by state employees that result in savings to the State.