

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1989

6
7 H.P. 1409

House of Representatives, February 7, 1986

8 Submitted by the Department of Personnel pursuant to Joint Rule 24.

9 Reference to the Committee on State Government suggested and ordered
printed.

EDWIN H. PERT, Clerk

10 Presented by Representative Gwadosky of Fairfield.

Cosponsored by Senator Andrews of Cumberland, Representative Lacroix
of Oakland and Representative Nadeau of Saco.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT Relating to State Personnel Law.
18

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

21 Sec. 1. 5 MRSA §551, as amended by PL 1979, c.
22 541, Pt. A, §24, is further amended to read:

23 §551. Title

24 Chapters 51 to 67 71 and all Acts amendatory
25 thereof shall be known and may be cited as the "Per-
26 sonnel Law."

27 Sec. 2. 5 MRSA §552, first ¶, as amended by PL
28 1979, c. 541, Pt. B, §1, is further amended to read:

29 Certain words and phrases shall have, for the
30 purposes of chapters 51 to 67 71, the following mean-
31 ings.

1 Sec. 3. 5 MRSA §552, sub-§3, as amended by PL
2 1979, c. 541, Pt. B, §2, is further amended to read:

3 3. Classified service. "Classified service"
4 means all offices and positions of trust and employ-
5 ment in the state service except those placed in the
6 unclassified service by ~~chapters 51 to 67~~ chapter 71.

7 Sec. 4. 5 MRSA §552, sub-§7, as enacted by PL
8 1973, c. 723, §1, is repealed.

9 Sec. 5. 5 MRSA §553, as amended by 1979, c. 541,
10 Pt. A, §25, is further amended to read:

11 §553. Discrimination

12 In carrying out chapters 51 to ~~67~~ 71, no discrim-
13 ination ~~shall~~ may be made on account of political or
14 religious opinions or affiliations or because of race
15 or national origin, sex or marital status or age or
16 physical disability, unless based upon a bona fide
17 occupational qualification.

18 Sec. 6. 5 MRSA §631, sub-§1, as amended by PL
19 1981, c. 270, §§2 and 3, is further amended to read:

20 1. Rules. After a public hearing, and in accord-
21 ance with the Maine Administrative Procedure Act,
22 chapter 375, subchapter II, and subject to the re-
23 quirements of chapters 51 to ~~67~~ 71, to prescribe or
24 amend rules ~~and regulations~~ relative to:

25 A. Eligible registers;

26 B. Classification of positions in the classified
27 service;

28 C. Compensation plan;

29 D. Examination for admission to the classified
30 service;

31 E. Promotion in the classified service;

32 F. Provisional, emergency, exceptional and tem-
33 porary appointments;

1 G. Probationary period;
2 H. Transfer;
3 I. Reinstatement;
4 J. Demotion;
5 K. Suspension, layoff and dismissal;
6 L. Leave of absence, resignation, hours of ser-
7 vice, vacation and sick leave;
8 M. Personnel records;
9 N. In-service training;
10 O. Service ratings;
11 P. Certification of payrolls; and
12 Q. Alternative working hours, consistent with
13 chapter 69;

14 which rules ~~and regulations~~ shall be in effect and
15 have the force of law upon the approval of the Gover-
16 nor;

17 Sec. 7. 5 MRSA §631, sub-§2, as amended by PL
18 1977, c.694, §15, is further amended to read:

19 2. Investigations. To make investigations either
20 at the direction of the Governor or the Legislature,
21 or upon the petition of an employee or a citizen, or
22 on his own motion concerning the enforcement and ef-
23 fect of chapters 51 to ~~67~~ 71, which investigations
24 are not adjudicatory proceedings under the Maine Ad-
25 ministrative Procedure Act, chapter 375;

26 Sec. 8. 5 MRSA §631, sub-§3, as enacted by PL
27 1975, c. 686, §4, is amended to read:

28 3. Enforcement. To enforce the observance of
29 chapters 51 to ~~67~~ 71 and the rules ~~and regulations~~
30 made thereunder;

31 Sec. 9. 5 MRSA §631, sub-§4, as amended by PL
32 1975. c. 766, §4, is further amended to read:

1 4. Report. To transmit an annual report to the
2 Governor. The report of the commissioner may be sup-
3 plemented by any additional comment, criticism or
4 suggestions for the more effectual accomplishment of
5 the purposes of chapters 51 to 67 71 that the board
6 may care to submit;

7 Sec. 10. 5 MRSA §631, sub-§6, as amended by PL
8 1977, c. 694, §17, is further amended to read:

9 6. Hearings. In the course of any investigations
10 under chapters 51 to 67 71, to hold hearings for the
11 purpose of gathering information. The hearings are
12 not adjudicatory proceedings under the Maine Adminis-
13 trative Procedure Act, chapter 375. In conjunction
14 with the hearings, he shall have the power to admin-
15 ister oaths and to subpoena and require the attend-
16 ance of witnesses and the production thereby of
17 books, papers, public records and other documentary
18 evidence pertinent to the investigation.

19 In case of the refusal of any person to comply with
20 any subpoena issued hereunder or to testify to any
21 matter regarding which he may be lawfully interro-
22 gated, the Superior Court in any county on applica-
23 tion of the commissioner may issue an order requiring
24 such person to comply with such subpoena and to tes-
25 tify; and any failure to obey such order of the court
26 may be punished by the court as a contempt thereof;
27 and

28 Sec. 11. 5 MRSA §632, first ¶, as amended by PL
29 1979, c. 541, Pt. B, §3, is further amended to read:

30 The commissioner shall prepare for each class of
31 positions in the classified service registers of per-
32 sons eligible for appointment to positions in each
33 such class. Each eligible register shall consist of
34 a list of all of the persons, who have shown by com-
35 petitive tests, as provided for in section 673, that
36 they possess the qualifications which entitle them to
37 be considered eligible for appointment to any posi-
38 tion in the class for which the eligible register is
39 to be prepared, and of employees who have resigned or
40 been dismissed, laid off or granted leaves of absence
41 and whose names have been restored to the eligible
42 register in accordance with chapters 51 to 67 71.

1 Sec. 12. 5 MRSA §642, sub-§3, as enacted by PL
2 1981, c. 289, §8, is amended to read:

3 3. Employee positions excluded. In establishing
4 criteria for making awards, the board may exclude
5 certain levels of positions from participation in the
6 program, but in no event may persons in positions
7 enumerated in chapter 71, sections 932 to 953, or Title
8 2, section 6, or Title 5, section 711 be eligible
9 to receive cash awards under the program.

10 Sec. 13. 5 MRSA §671, first ¶ is amended to
11 read:

12 The classified service shall consist of all per-
13 sons holding offices and employments now existing or
14 hereafter created in the state service, except per-
15 sons who are holding or shall hold offices and em-
16 ployments exempted by ~~section 711~~ chapter 71.

17 Sec. 14. 5 MRSA §671, 2nd ¶, as repealed and re-
18 placed by PL 1977, c. 564, §22, is amended to read:

19 Appointments to and promotions in the classified
20 service shall be made according to merit and fitness,
21 from eligible lists prepared upon the basis of exami-
22 nations, which so far as practicable shall be compet-
23 itive. No person shall be appointed, transferred,
24 promoted or reduced as an officer, clerk or employee
25 or laborer in the classified service in any manner or
26 by any means other than those prescribed in chapters
27 51 to ~~67~~ 71 and in the rules made in pursuant to
28 chapters 51 to ~~67~~ 71.

29 Sec. 15. 5 MRSA §678, first ¶, as amended by PL
30 1977, c. 674, §5, is further amended to read:

31 An appointing authority may dismiss, suspend or
32 otherwise discipline an employee for cause. This
33 right is subject to the right of appeal and arbitra-
34 tion of grievances set forth in sections 751 to 753,
35 or by personnel rule; and said sections 751 to 753
36 shall apply to any employee who has satisfactorily
37 completed an initial probationary period. This para-
38 graph shall not apply to an employee appointed to a
39 major policy-influencing position listed in ~~section~~
40 ~~711, subsection 2~~ chapter 71, sections 932 to 953.

1 Sec. 16. 5 MRSA §903, sub-§4, as enacted by PL
2 1981, c. 270, §4, is amended to read:

3 4. Prohibition. Positions listed in ~~section 711,~~
4 ~~subsection 2,~~ chapter 71, sections 932 to 953 and in
5 Title 2, section 6, may not be filled by persons em-
6 ployed under any job-sharing authority.

7 Sec. 17. 5 MRSA §931, as amended by PL 1985, c.
8 481, Pt. A, §§7-9, is repealed and the following en-
9 acted in its place:

10 §931. Unclassified service

11 1. Composition. The unclassified service com-
12 prises positions held by officers and employees as
13 follows:

14 A. Elective officers chosen by popular election
15 or appointed to fill an elective office;

16 B. Officers who, under the Constitution of Maine
17 or laws, are chosen by the Legislature;

18 C. Heads of departments, members of boards and
19 commissions, and other officers and employees re-
20 quired by law to be appointed by the Governor;

21 D. Officers and employees in the judiciary of
22 the State;

23 E. Officers and employees of the Legislature;

24 F. Officers and enlisted men in the National
25 Guard and Naval Militia of the State;

26 G. Employees working in the Governor's office
27 and at the Blaine Mansion;

28 H. Officers and employees of the unorganized
29 territory school system and the teachers, admin-
30 istrators and professional employees of the state
31 vocational-technical institutes and the Governor
32 Baxter School for the Deaf and the teachers, ad-
33 ministrators and professional employees of school
34 systems in other state institutions;

I. Deputies, assistants, staff attorneys, re-
search assistants and the secretary to the Attor-
ney General; and

J. Major policy-influencing positions listed in this chapter and other positions in the Executive Branch made unclassified by law.

2. Relationship to the classified service. Persons in unclassified positions referenced in subsection 1, paragraphs H and J, and who have satisfactorily completed a year of continuous service, 2080 hours, in either the classified or unclassified service shall be eligible for appointment to the classified service on the same basis as other members of the classified service.

3. Major policy-influencing positions. Except where a term is otherwise provided by law, the legislatively designated appointing authority of the department or agency in which a major policy-influencing position is located may appoint and remove persons to and from these positions. In the event that there is a permanent appointee in a classified position that is made a major policy-influencing position, the incumbent of the position on the effective date of the change may retain his appointment subject to the Personnel Law.

STATEMENT OF FACT

Sections 1 to 16 of this bill represent minor language changes to the laws to ensure conformity since the enactment of Public Law 1983, chapter 729, regarding the unclassified service.

Section 17 provides that unclassified employees of the state vocational-technical institutes, teachers and other state institutions and employees in major policy-influencing positions who have completed one year of continuous service shall be eligible to compete for appointment to the classified service as if they were members of the classified service. Presently, teachers of the correctional facilities may not compete for promotional opportunities in the

1 classified service as either agency or statewide
2 promotional candidates because of their unclassified
3 status. This bill enables these employees to compete
4 on an equal basis with their peers in the classified
5 service.

6 Further, approximately 2/3 of the employees cur-
7 rently serving in major policy-influencing positions
8 are career employees who were appointed from the
9 ranks of the classified service. This bill provides
10 that employees in major policy-influencing positions
11 may pursue career opportunities in the civil service
12 system with the eligibility to compete as a classi-
13 fied employee. Prospectively, this provision grants
14 added protection for career employees who are
15 recruited to serve in major policy-influencing posi-
16 tions. It is intended that this provision will serve
17 to enhance the inability of experienced public manag-
18 ers and technical staff who may often be reluctant to
19 accept an appointive position. As a result, the ef-
20 forts of cabinet officials to recruit capable employ-
21 ees from the ranks of the civil service system should
22 be improved.

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