

MAINE STATE LEGISLATURE

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E I G H T Y - E I G H T H L E G I S L A T U R E

Legislative Document

No. 970

S. P. 485

In Senate,

Referred to Committee on Judiciary and 500 copies ordered printed.
Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-SEVEN

AN ACT to Provide For a System of Personnel Administration in State Employment; to Create a State Personnel Board, and a Director of Personnel; and to Define the Powers, Duties and Proceedings of Such Board and Director.

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

Sec. 1. Definition of terms. Certain words and phrases hereinafter used shall have for the purposes of this act, the following meaning :

1. "Board" means the "state personnel board."
2. "Director" means the "state personnel director."
3. "Appointing authority" means the officer, board, commission, person, or group of persons having the power by virtue of the Constitution, a statute, or lawfully delegated authority to make appointments.
4. "Classified service" means all offices and positions of trust and employment in the state service except those placed in the unclassified service by this act.
5. "Employee" means any person holding a position subject to appointment by an appointing authority.
6. "Eligible register" means whatever type of book, binder, or other record which may be used having thereon the names of persons qualified by examinations to fill positions in the classified service.

Sec. 2. State personnel board. There is hereby created and established a state personnel board. It shall be composed of 3 members, not more than 2 of whom shall be of the same political party. The state budget officer shall be ex-officio member of the board, and its chairman. The 2 remaining members of the board shall be appointed by the governor with the advice and consent of the council. In the initial appointments of such members the governor shall designate 1 member for a term of 2 years and a 2nd member for a term of 4 years. The term of all subsequent appointive members of the board shall be 4 years and until their successors are appointed and qualified. Vacancies in the appointive membership of the board shall be filled within 60 days after the vacancy occurred by the governor with the advice and the consent of the council for the unexpired portion of the term. The members of the board other than the chairman shall receive \$5.00 a day for the time actually spent in the discharge of their duties and their necessary expenses.

Sec. 3. Powers and duties of the personnel board. (1) The personnel board shall have the following powers and duties:

(a) To appoint a personnel director as provided in section 4 of this act.

(b) Upon recommendation of the director and after a public hearing, and subject to the requirements of this act, to prescribe or amend rules and regulations relative to: (1) eligible registers, (2) classification of positions in the classified service, (3) compensation plan, (4) examination for admission to the classified service, (5) promotion in the classified service, (6) provisional, emergency, exceptional and temporary appointments, (7) probationary period, (8) transfer, (9) reinstatement, (10) demotion, (11) suspension, lay-off, and dismissal, (12) leave of absence, resignation, hours of service, vacations, and sick leave, (13) personal records, (14) in-service training, (15) service ratings, and (16) certification of pay-rolls.

(c) To make investigations and report its findings and recommendations in cases of dismissal from the classified service as is provided in section 16.

(d) To make investigations either at the direction of the governor or the legislature, or upon the petition of an employee or a citizen, or of its own motion concerning the enforcement and effect of this act; to enforce through the director the observance of its provisions and the rules and regulations made thereunder.

(e) To receive, review, and transmit to the governor the annual report of the director. The report of the director may be supplemented by any additional comment, criticism or suggestions for the more effectual accomplishment of the purposes of this act that the board may care to submit.

(f) To keep full and complete minutes of its proceedings, which shall, subject to reasonable regulations, be open to public inspection.

(2) The rules and regulations provided for in this section shall be in effect and have the force of law upon the approval of the governor and council.

(3) In the course of any investigation under the provisions of this act, each member of the board shall have the power to administer oaths and to subpoena and require the attendance of witnesses and the production thereby of books, papers, public records and other documentary evidence pertinent to such investigation. In case of the refusal of any person to comply with any subpoena issued hereunder or to testify to any matter regarding which he may be lawfully interrogated, the superior court in any county on application of any one of the members of the board or of the director, when authorized by the board, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

Sec. 4. Director of personnel. There is hereby created a director of personnel. Within 60 days after this act goes into effect the state personnel board shall appoint a director of personnel. The director shall be, at the time of his appointment, a person thoroughly familiar with the principles and experienced in the methods and techniques of public personnel administration on the merit basis. His tenure of office shall be at the pleasure of the appointing board and he shall receive such compensation as shall be fixed by the board with approval of the governor and council.

Sec. 5. Powers and duties of the director. The director of personnel shall have the power and duty to administer and make effective the provisions of this act, and the rules and regulations of the personnel board as herein provided.

Sec. 6. Classified service. The classified service shall consist of all persons holding offices and employments now existing or hereafter created in the state service, except persons who are holding or shall hold offices and employments exempted by section 7 of this act.

Appointments to and promotions in the classified service shall be made according to merit and fitness, from eligible lists prepared upon the basis of examinations, which so far as practicable shall be competitive. No person shall be appointed, transferred, promoted, or reduced as an officer, clerk, or employee or laborer in the classified service in any manner or

by any means other than those prescribed in this act and in the rules of the personnel board made in pursuance to this act.

The classified service shall be separated into the following divisions:

(1) competitive, (2) non-competitive, (3) labor, in accordance with rules and regulations prescribed by the board.

Sec. 7. Unclassified service. The unclassified service comprises positions held by officers and employees who are:

(1) Chosen by popular election or appointed to fill an elective office.

(2) Officers who, under the constitution or statutes, are chosen by the legislature.

(3) Heads of departments and members of boards and commissions required by law to be appointed by the governor with the advice and consent of the council, bureau directors, and the official clerk of the public utilities commission and of the Maine state liquor commission.

(4) Officers and employees in the judicial service of the state.

(5) Officers and employees of the senate and house of representatives of the legislature of the state of Maine.

(6) Officers and enlisted men in the national guard and naval militia of the state.

(7) The private secretary, assistant secretary and stenographers in the governor's office, and those employed at the Blaine Mansion.

(8) Commissioned officers, non-commissioned officers and patrolmen of the Maine state police, provided that the chief may avail himself of the facilities of the personnel board in the examination of applicants for the position of police officer. The appointment, training, promotion, supervision, dismissal and administration of the Maine state police shall continue to be governed by the provisions of chapter 29 of the revised statutes of 1930 as amended in 1931, 1933 and 1935.

(9) All officers and employees of the University of Maine and of the several state normal schools.

Sec. 8. Eligible registers. (1) The director shall prepare for each class of positions in the classified service, registers of persons eligible for appointment to positions in each such class. Each eligible register shall consist of a list of all of the persons, who have shown by competitive tests, as provided for in section 12 of this act, that they possess the qualifications which entitle them to be considered eligible for appointment to any position in the class for which the eligible register is to be prepared, and of employees who have resigned or been dismissed, laid off, or granted leaves of absence and whose names have been restored to the eligible register in accordance with the provisions of this act.

(2) The names of all persons attaining the minimum final earned ratings established by the director in advance of the giving of the test shall be placed upon the register in order of their ratings.

(3) All persons competing in any test shall be given written notice of their final earned ratings, and of their relative standing upon the eligible register or of their failure to attain a place upon the register.

Sec. 9. Classification plan. It shall be the duty of the director of personnel to ascertain and record the duties and responsibilities of all positions in the service and to establish classes for such positions, in conformance with regulations adopted therefor by the personnel board as provided in section 3 of this act. The titles so classified and so established shall be used in all personnel, accounting, budget, appropriation, and financial records of all state departments, commissions, and institutions.

Sec. 10. Compensation plan. The director shall, as soon as practicable after the adoption of the classification plan, submit to the board a proposed plan of compensation showing for each class of position in the classified service minimum and maximum salary rates and such intermediate rates as he deems desirable.

When the compensation plan has become effective through its adoption by the board as provided in section 3 of this act it shall constitute the official schedule of salaries for all classes of positions in the classified service. No position shall be assigned a salary greater than the maximum or less than the minimum rates fixed in the compensation plan. Salaries of persons holding positions in the classified service shall not be approved by paying authorities unless such salaries conform to the adopted compensation plan.

Salary advancements within an established range shall not be automatic, but shall be dependent upon specific recommendation of the appointing officer and approval of the director of personnel and the board. Such recommendation shall be based upon standards of performance as indicated by merit ratings or other pertinent data. No advancements in salary shall be made until the employee has completed the probationary period.

Sec. 11. Positions in the classified service; how filled. Positions in the classified service shall be filled by original appointment, promotion, transfer, reinstatement, or demotion in pursuance of rules and regulations established by the personnel board and administered by the director of personnel.

Sec. 12. Examinations. (1) All examinations for positions in the classified service shall relate to those matters which will fairly test

the capacity and fitness of the persons examined to discharge the duties of the office or employment sought by them, but due regard shall be shown for the capacity of the applicant for promotion to higher positions in the service.

(2) The personnel director, subject to the approval of the personnel board, shall determine the character, type and content of examination for admission to the classified service; the time and place of holding examinations; the forms of application blanks for admission to the examination to be filed by applicants provided that admission to examinations shall be open only to those who have been legal residents of Maine for at least 1 year except that at the request of the appointing authority the residence requirement may be waived in exceptional or emergency cases in which the board deems such action necessary for the good of the service; the minimum requirements for admission to the examination; and the value for each phase of the tests used in determining the average rating of the applicant.

(3) Public notice of the time, place, and general scope or nature of every examination or test shall be given in the manner prescribed by rules drawn up by the director and approved by the board.

Sec. 13. Discrimination prohibited. In carrying out the provisions of this act, no discrimination shall be made on account of political or religious opinions or affiliations, sex or marital status.

Sec. 14. Probationary period; permanent appointment. All original appointments to the classified service shall be for a probationary period. The duration of such probationary period shall be determined by the personnel director, but in no case shall it be for less than 6 months.

Sec. 15. Temporary and provisional appointments. Whenever it is impossible to certify eligible persons for appointment to a vacancy in the classified service, then, the appointing authority may nominate a person to the director. If such nominee is found by the director to have had experience and training which appear to qualify him for the position, he may be temporarily appointed to fill such vacancy but only until an appropriate eligible register can be established and an appointment made therefrom, provided that, the director with the approval of the board may make a provisional appointment to fill a technical or professional position, which requires a specialized knowledge or training to carry out the duties of the position, and cannot be filled from the eligible register. In no event shall a temporary appointment be continued for more than 3 months. Successive temporary appointment of the same person shall not be made; not more than 1 temporary appointment shall be made to any position

within any 12 month period. The director may authorize, without requiring competitive tests, the appointment of unskilled laborers or persons engaged in custodial and domestic work in state institutions or departments.

Sec. 16. Dismissal. An appointing authority may dismiss a classified employee whenever he considers the good of the service to be served thereby. In every case of such dismissal at the request of the dismissed employee. The board shall investigate the circumstances relating to the dismissal and the fairness thereof and if it shall find the charges unwarranted the board may recommend the transfer of the dismissed employee to the same or a similar class of position in another department or institution, provided, that such transfer shall be made to such department or institution only with the approval of the appointing authority itself. In case such transfer is not effected, the name of the dismissed employee may be placed on the appropriate eligible register.

Sec. 17. Personnel records. (1) Every appointment, transfer, promotion, demotion, dismissal, vacancy, change of salary rate, leave of absence, absence from duty, and other temporary or permanent change in status of employees in both the classified service and the unclassified service shall be reported to the director at such time, in such form, and together with such supporting or pertinent information as the board shall by rule prescribe.

(2) The director shall maintain a perpetual roster of all officers and employees in the classified and unclassified services, showing for each person such data as the board deems pertinent.

Sec. 18. Training programs. The director shall devise plans for and co-operate with appointing authorities and other supervising officials in the conduct of employee training programs to the end that the quality of service rendered by persons in the classified service may be continually improved.

Sec. 19. Service ratings. As soon as practicable after the passage of this act and after consultation with appointing authorities and other supervising officials, the director shall establish standards of performance for each class of position and a system of service ratings based upon such standards which shall be in effect upon their approval by the board as provided in section 3.

Sec. 20. Solicitation of political campaign contributions prohibited. No officer or employee in the classified service of this state shall directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription or contribution, or political

service, whether voluntary or involuntary, for any political purpose whatever, from any officer, agent, clerk or employee of the state or from any outsider.

Sec. 21. Certification of payrolls. (1) No fiscal officer of the state shall draw, sign, or issue, or authorize the drawing, signing or issuing of any warrant or check upon the state treasurer or other disbursing officer of the state, for the payment of a salary or other compensation for personal services, nor shall the treasurer of state or other disbursing officer of the state pay any salary or other compensation for personal services unless a payroll or account for such salary or other compensation, containing the names of all persons to be paid and the amounts to be paid them, has been certified by the director or a person designated by him.

(2) Any payment violating the provisions of the compensation plan or the rules pertaining thereto or made to a person appointed or established in his position in a manner contrary to the provisions of this act may be recovered from the appointing authority, the director, or any officer or person making such payment, whoever is culpable, or from the sureties on the official bond of such officer or person. Action for such recovery may be maintained by the board or any member thereof, any officer or employee of the state service, or any citizen of the state. All moneys recovered under the provisions of this section shall be paid into the state treasury and credited to the general fund.

Sec. 22. Appropriations. A sum of \$10,000 is hereby appropriated to pay any and all expenses which may be incurred in the administration and enforcement of the provisions of this act during the first biennium after this act goes into effect. Thereafter the personnel director, with the approval of the personnel board, is hereby authorized to submit to the advisory committee on the budget, biennially an estimate of the necessary expenditures for the ensuing biennium.

Sec. 23. Status of present employees. The employees in the personnel service of the state at the effective date of this act shall be admitted to the classified service and continue their employment upon recommendation of the personnel board and upon meeting such evidence of fitness as it may prescribe.

Sec. 24. Violations of act and rules; penalty. Any person violating any of the provisions of this act or of the rules established in accordance with the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$100. Any person holding

a public office or position who is convicted under the provisions of this section shall be deemed to have vacated the office or position and such person shall be incapable of holding public office for a period of 5 years after the date of such conviction.

Sec. 25. Repealing clause. All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.