

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SENATE

THEODORE S. CURTIS, JR., OF PENOBSCOT, DISTRICT 26, CHAIRMAN
J. HOLLIS WYMAN OF WASHINGTON, DISTRICT 29
DAVID L. GRAHAM OF CUMBERLAND, DISTRICT 11



HOUSE

LEIGHTON COONEY, SABATTUS, CHAIRMAN
MICHAEL E. CARPENTER, HOULTON
JUDY C. KANY, WATERVILLE
THOMAS S. PELOSI, PORTLAND
RODNEY S. QUINN, GORHAM
JAMES B. WAGNER, ORONO
ROGERICK E. FARNHAM, HAMPDEN
OLYMPIA J. BOWE, AUBURN
THEODORE E. LEWIN, AUGUSTA
ROBERT G. STUBBS, HALLOWELL

STATE OF MAINE
ONE HUNDRED AND SEVENTH LEGISLATURE
COMMITTEE ON STATE GOVERNMENT

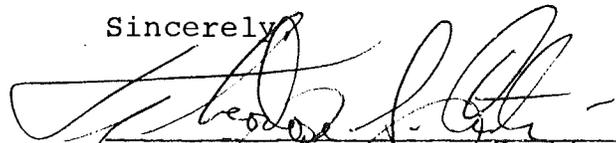
December , 1976

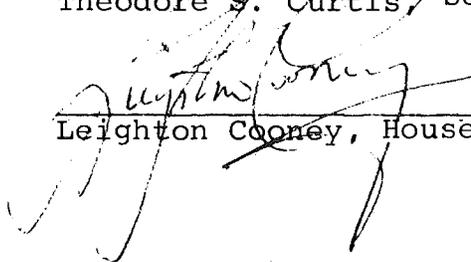
Legislative Council
107th Legislature
State House
Augusta, Maine 04333

Members of the Council:

In accordance with H.P. 1776, an Order directing the Committee on State Government to study various aspects of policy-making and policy-implementing positions in State Government below the level of Commissioner, we enclose the final report of the Committee.

Sincerely,


Theodore S. Curtis, Senate Chairman


Leighton Cooney, House Chairman

REPORT OF
THE COMMITTEE ON STATE GOVERNMENT
ON
THE CLASSIFICATION OF POLICY POSITIONS IN STATE GOVERNMENT

December, 1976

Senate

Theodore S. Curtis, Chairman
J. Hollis Wyman
David L. Graham

House

Leighton Cooney, Chairman
Michael E. Carpenter
Judy C. Kany
Thomas S. Pelosi
Rodney S. Quinn
James B. Wagner
Roderick E. Farnham
Olympia J. Snowe
Theodore E. Lewin
Robert G. Stubbs

TABLE OF CONTENTS

	<u>Page</u>
I. Summary-----	1
II. Purpose-----	3
III. Background and analysis-----	4
A. Purpose and concept of unclassified positions---	4
B. Policy-making and policy-implementing positions-	6
C. Unclassified positions in Maine-----	8
IV. Recommendations and conclusions-----	10
A. Recommendations-----	10
B. Conclusions-----	18
V. Minority report -----	19
VI. Appendices:	
A. Appendix A--H.P. 1776-----	20
B. Appendix B--Committee Recommendations on Un- classifying Policy Positions Below the Com- missioner Level in State Government-----	23
C. Appendix C--5 MRSA §711--Unclassified Service---	30
D. Appendix D--Draft Legislation to Implement Recommendations in this Report-----	32-67

I. SUMMARY

Purposes of Study

--To develop a policy on whether policy-making and policy-implementing positions in State Government immediately below the commissioner level should be unclassified, and to apply that policy to such positions.

Background

--The question of whether to classify policy positions reflects a conflict between providing the protection of the classified service to civil servants and making them responsive to the public through the use of an unclassified service.

--In Maine, about half of the policy positions are unclassified, and they vary widely in responsibility, ability to influence policy, proximity to the public, and skills required.

Recommendations--A policy for unclassified policy positions:

- Determining whether such positions should be unclassified is an appropriate Legislative function.
- As a matter of policy, there should be a presumption that such positions should be unclassified, but each position should be separately judged according to criteria discussed in the Report (see pages 11-13).
- Recommendations are made for all policy positions currently authorized.

- To the extent possible, appointment and removal should be at the pleasure of the appointing authority, with currently classified employees and employees serving terms "grandfathered" in the position for 4 years.
- Unclassified should be entitled to the same leave, insurance, and retirement benefits as classified, with portability to and from classified service.
- Six month "bumping" rights for classified employees promoted to unclassified positions.

II. PURPOSE

The purposes of this Study are set out in H.P. 1776, which is attached as Appendix A. In brief, they are to:

- Examine the more than 100 policy-making and policy-implementing positions in State Government below the level of Commissioner, including deputy commissioners, directors, executive directors, and bureau chiefs, as appropriate.
- Develop a policy determining whether these positions should be in the classified or unclassified service, in order to promote efficient, responsible, and responsive operation of State Government.
- Apply this policy to the positions.

III. BACKGROUND AND ANALYSIS

A. Purpose and Concept of Unclassified Positions.

For more than 125 years, a major issue in the field of public personnel management has been the question: to what extent should employing authorities be given unchecked discretion in hiring, compensating and rewarding, and terminating public employees? The issue derives mainly from 2 conflicting (and, some contend, irresolvable) perspectives on public employment:

- Public employment is unlike private employment in that it's purpose is to "serve the public." Public employment should not be a reward for political activity or a reward for some "irrational" reason (such as blood relationship). Once hired, public employees should be permitted to perform in the public interest, without fear of political (and particularly, partisan political) or "irrational" interference to their employment. Therefore, the hiring, compensating and rewarding, and terminating of public employees should be done under a logical and predictable process which offers protection from the "harms" of politics and "irrational" influences, and which has a mechanism to assure that performance is in the public interest.
- Public employment is, in fact, employment by and for the public. It should be responsive to the will of the public. And the will of the public on policy matters is expressed through the political process (and particularly,

the partisan political process), not through a bureaucratic process. Therefore, key positions in public employment should not be insulated from politics; rather, they should be responsive to it.

In an attempt to resolve this conflict (or at least to accommodate it), most government personnel systems evolved to what is now a fairly common practice of having both "classified" and "unclassified" positions. Neither of these terms is susceptible to a precise definition which can be systematically applied. Therefore, for this Study the Committee used the following as working definitions:

- Classified positions: Those positions in the State civil service which are under a "merit system,"^{a/} which by statute, regulation, and practice sets out rules governing:
- (a) Recruiting, examining, qualifying, and selecting persons to fill these positions.
 - (b) The terms and conditions under which such persons are employed, such as pay, fringe benefits, hours of work, and permissibility of certain types of personnel action such as reassignments and disciplinary actions.
 - (c) The termination of employment.
 - (d) Other conditions and attributes of the position, such as its place in a "career ladder", and restrictions on certain types of activities, including political participation, nepotism, and conflicts of interest.

^{a/} In the Maine Statutes, these are often referred to as positions under, or subject to, The Personnel Law.

--Unclassified positions: Those positions in the State Civil Service which are not strictly under a "merit system" and

(a) Unlike a classified position, do not require the following of rules for filling the positions, rewarding and terminating the incumbent, and determining the behavior of the incumbent.

(b) But, like a classified position, require observance of some rules, notably having to do with conflict of interest and nepotism, and in some instances rules requiring that the person selected meet certain qualifications. More generally and succinctly put, a person holding an unclassified position serves at the pleasure of the person who appointed him.

B. Policy-making and policy-implementing positions.

The Study Order directs the Committee to consider the ...policy-making and policy-implementing positions in State Government below the level of commissioner, including deputy commissioners, directors, executive directors and bureau chiefs...

In applying the Order's "policy-making and policy-implementing" focus, the Committee worked closely with the Department of Personnel to arrive at a list of over 130 positions in the organization level immediately below the head of all major State agencies. These second-level positions have no uniform position title, but are variously termed director, deputy, superintendent, and the like. In addition, the Committee treated certain positions in the third organizational level of an agency

where these positions very clearly involved policy-making or policy-implementing. Two notable examples of such third-level positions are the superintendents of major state institutions and division directors of the Department of Transportation.

The policy-making and policy-implementing positions are listed in Appendix B.

The Committee believes that it is not possible to define the terms "policy", "policy-making" or "policy-implementing" so as to permit a systematic determination of whether a position is policy-making or policy-influencing. The Committee believes that reasonable people can disagree on this. The Committee believes, however, that this determination must be made on the basis of definitions that are as explicit as possible. The following working definitions were used:

--Policy--"...a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions..." (from Webster's Seventh New Collegiate Dictionary); the Committee further defines the "given conditions" to include the substantive legislation and appropriations and other resources provided by the Legislature.

--Policy-making and policy-implementing--The Committee did not attempt to distinguish these terms. Rather, the Committee determined whether a position could exercise substantial influence over the programs which it administers. If it appeared that the position could so

exercise, then it was considered a "policy position" and relevant to the study.

C. Unclassified positions in Maine.

Few statements of general applicability can be made about the policy-level position identified by the Committee. In Appendix C is a copy of 5 MRSA §711, which purports to list exhaustively all unclassified positions. It is obvious from Appendix B, which indicates whether policy-level positions are in fact unclassified, that 5 MRSA §711 does not accurately reflect the present situation (There are also non-policy positions in State government which are unclassified and which are not on the Committee's list of positions). Beyond 5 MRSA §711, other provisions in the Statutes set out for some policy positions (but not for all) the methods by which they may be filled and vacated, terms of office, compensation, duties, and the like. There are no regulations of the Department of Personnel which comprehensively treat unclassified employment.

Policy-level positions in Maine may be "characterized" as follows:

--Of the roughly 130 such positions, about half are unclassified.

--For the unclassified positions, there is no policy which is systematically applied for appointing or removing incumbents, terms of office, or compensation. By statute they are entitled to participate in State employee insurance and retirement programs. In practice, they are given salary increases at the same time and at roughly

the same rate as classified State employees. All other benefits (such as rate of accrual of vacation days) are administratively determined. Some positions are required by Federal Law or regulations to be classified as a condition of receiving a Federal grant.

--Among the policy positions, there is a wide range in the size of budget and personnel complement supervised, amount of discretion allowed in decision making, proximity to the public, and kind and amount of expertise required to perform the job.

IV. RECOMMENDATIONS AND CONCLUSION

A. Recommendations

Recommendation 1. Determining whether a policy-level position should be classified or unclassified should continue to be a Legislative function, done by Statute.

Policy-level positions have been defined above as those which make and implement policy within constitutional and statutory authority and constraints. In most instances, persons in these positions can substantially affect the rights and property of others. The determination of how these positions should be responsive to the public is a critical determination which should be done publicly and deliberately. The Legislature is the most open and publicly-responsive branch of State government, and as such is the appropriate branch to make such a determination. Statutes are a matter of public record and are the appropriate vehicles for recording such a decision.

Recommendation 2. With respect to policy level positions, there should be a presumption that they should be unclassified. However, as a practical matter for the future, the decision whether to unclassify should be made separately for each position, taking account of several important criteria.

There should be a presumption that policy-level positions should be unclassified--it is the Committee's feeling that, generally, such positions should not be "protected" by a "classified service". At the same time, the Committee believes that not all policy-level positions should be unclassified.

In part, this derives from the fact that it is not possible to generally specify a set of positions at a particular organizational level in Maine State government with the same or similar characteristics.

Therefore, the Committee recommends that the decision whether to unclassify should be made individually for each position. The position should be evaluated in the light of several criteria, one or a combination of several of which may clearly point to a determination that the position should be unclassified or classified. Illustrative of relevant criteria are the following:

1. Budget--The size of the budget controlled may be an indicator of the potential influence of the position.
2. Personnel--Similarly, the number of persons supervised may be an indication of potential influence.
3. Salary and Level--Presumably, the higher the salary and the higher the level in the organization the more influential the position. However, in Maine State government, a particular position title (e.g., director) or level in an organization (e.g., chief of a "division") do not always mean equal responsibility.
4. Policy-maker--To what extent is discretion permitted to the position to make policy decisions within the broad policy set out in the authorizing legislation?
5. Policy-implementor or Policy-influencer--In the absence of policy-making powers, considerable discretion may be available in determining rate or place of operation, who shall be served and when, and similar questions.

6. Relation to public--Does the position deal directly with the public rather than, for example, simply service another organization? Irrespective of direct public dealing, does the position have a considerable direct impact on the public?
7. Responsiveness--Does the position advise or have a confidential relationship with a high elected or appointed official? Is the position required to advocate for a political official?
8. Personnel policy--With respect to a particular position, how heavily do considerations of personnel policy weigh, in terms of morale and incentives to classified employees to be able to advance through the ranks to the top--considerations here include the extent to which benefits are "portable" between classified and unclassified service, and whether there are "bumping" rights for a classified employee who has been promoted to an unclassified position, but who wishes to return to his last classified job.
10. Expertise and attractiveness--Are the technical requirements and job market for a particular position such that some form of "classified service" should be used to attract, select, and retain qualified people?

11. Continuity--The Committee below tentatively concludes that there is no need for the term of office of policy-positions below the commissioner level to overlap the term of either the commissioner to whom the position reports or the Governor, to assure continuity. This conclusion is, nevertheless, tentative, and for this reason the Committee believes that continuity ought to be a consideration in unclassifying a position.
12. Sensitivity--The functions of certain positions are particularly sensitive to damaging extraneous pressures, and for this reason alone the position ought to be classified. The Committee has determined that several positions have this attribute, and concludes that sufficient safeguards are provided by having an unclassified position as these positions immediate superiors. The positions involved are discussed below.

Recommendation 3. With several exceptions, all currently authorized policy positions immediately below the level of commissioner are recommended to be unclassified. The recommendations for each position are shown in Appendix B and are discussed below.

The Committee has reviewed each policy position and determined whether it should be unclassified. Generally, all such positions are recommended to be unclassified; in addition, the Committee has the following comments:

1. Department of Audit--The Committee believes that the

3 division directors clearly are policy positions. However, it recommends that these positions be classified, in recognition of the sensitivity of the audit functions and the Department's special relationship to the Legislative and Executive branches.

2. Baxter State Park--The position of Business Manager is not considered a policy position.
3. Department of Business Legislation--The Director of the Central Licensing Division is a policy position and should be unclassified, as are the other bureau and division directors of the Department.
4. Department of Educational and Cultural Services--Technically, the only position immediately below the Commissioner is the Deputy Commissioner. Nine other positions, however, clearly are policy positions, and therefore are recommended to be unclassified.
5. Department of Finance and Administration--The Director of Central Computer Services is a particularly sensitive position, having access to confidential information and the power to release it. The Committee recently recommended, and the Legislature approved, legislation to classify the position.
6. Department of Inland Fisheries and Game--Technically, the only position immediately below the Commissioner is the Deputy Commissioner. Ten other positions, however, clearly are policy positions, and therefore are recommended to be unclassified.

7. Department of Manpower Affairs--Four policy positions are required to be classified as a condition of receiving Federal grants-in-aid.
8. Department of Marine Resources--Two positions in addition to the Deputy Commissioner are policy positions and therefore are recommended to be unclassified.
9. Department of Mental Health and Corrections--The chiefs of major institutions are policy positions and are recommended to be unclassified.
10. Department of Personnel and Maine State Retirement System--The assistant directors of these two agencies are recommended to remain classified, because of the sensitivity of the positions (in particular, having access to confidential information).
11. Department of Transportation--Deputies, directors, and the chief counsel positions are recommended to be unclassified, because they are policy positions.

Recommendation 4. The Commissioner to whom a policy position reports should have the power to appoint and remove persons to and from the position, beginning with the effective date of authorizing legislation; provided that (a) incumbents of currently classified policy positions which are unclassified by such legislation may, at their option, retain the position in classified status until January 1, 1982; and (b), incumbents of policy positions currently classified who were appointed for a term may, at their option, retain the position until the earlier of either the expiration of their term or January 1, 1982.

The Committee considered at length the question of terms for policy positions. Among the alternatives considered were terms fixed in years, terms coterminous with the appointing authority, and terms overlapping the Governor's term of office, to provide continuity. The Committee concludes that the preferred method is to allow the appointing authority to appoint and remove persons as it sees fit, since this method is most likely to provide incentives:

- To the appointor, to select a person competent and compatible, since in practice the appointor can be held responsible for the performance of the appointee; and
- To the appointee, to perform.

As a matter of equity for persons who have accepted policy positions under the classified service or for a term, the Committee recommends that they be permitted to retain the position for a period of 4 years or through the expiration of their term, whichever is earlier. The Committee feels that a period of 4 years is sufficient to permit the making of other employment arrangements, should they be needed.

Recommendation 5. Occupants of unclassified policy positions should be entitled to exactly the same fringe benefits as occupants of classified positions, with respect to vacation and sick leave, health and life insurance, and retirement. These benefits should be "portable" between the classified and unclassified services.

Occupants of unclassified policy positions should be entitled to reasonable fringe benefits. The benefits are identical to those available to classified employees and similar to

those offered in much private sector employment. Classified employees should be able to accept an unclassified policy position and unclassified policy position employees should be able to accept a classified position without paying a penalty for changing position.

Recommendation 6. Persons occupying a classified position who accept an unclassified position should have the right to return to the classified position for a period of 6 months after their appointment to the unclassified position.

Under the system of unclassified policy positions recommended, it is reasonable to assume that a classified employee who is offered a position is offered the position because he is thought to be particularly able to do this job. It is realistic to recognize that, once on the job, either the employee or his employer may have second thoughts, for a variety of reasons. Permitting the employee to return to his former position within a 6 month trial period serves 2 purposes:

- It removes the disincentive to able, classified employees to accept an unclassified position; and
- It clears the ways for removing classified employees so appointed who, it turns out, were a bad choice.

B. Conclusion

Other questions need to be answered with respect to these positions--for example, the Committee did not consider questions on qualifications or salary for particular policy positions. The classification study now being implemented by the Executive

branch should treat these questions. The Committee anxiously awaits this implementation and will work to achieve a system of policy-making and policy-implementing positions which will promote efficient, responsible, and responsive operation of State government.

MINORITY REPORTS

Minority report of Representative Cooney

Representative Cooney does not concur in the recommendation that the State archivist should be classified. He believes that the archivist should be unclassified: it is a policy position; that application of the criteria identified by the Committee clearly calls for unclassifying the position; and that unclassifying this position is consistent with the Committee's treatment of other policy positions.

APPENDICES

APPENDIX A

HP 1776

2,

STATE OF MAINE

In House _____

~~Ordered,~~

Whereas, there are more than 100 policy-making and policy-implementing positions in State Government below the level of commissioner, including deputy commissioners, directors, executive directors and bureau chiefs; and

Whereas, at present there seem to be marked inconsistencies in the qualifications for appointments to these various positions, in the length of terms which persons holding these positions serve, in whether or not the terms of these persons overlap the terms of the commissioners under whom they serve and in whether or not these persons serve in the classified or unclassified service of the State; and

Whereas, it is desirable to have a consistent legislative policy to resolve the above inconsistencies; now, therefore, be it

Ordered, the Senate concurring, that the Legislative Council, through the Joint Standing Committee on State Government, be authorized to study the inconsistencies listed above and to determine a consistent policy concerning the qualifications, length of terms, time of appointment and position in the classified or unclassified service of the various deputy commissioners, directors, executive directors and bureau chiefs of State Government in order to promote efficient, responsible and responsive operation of State Government; and be it further

Ordered, that the Council report the results of its findings together with any proposed recommendations and necessary implementing legislation to the next special or regular session of the Legislature; and be it further

Ordered, upon passage in concurrence, that suitable copies of this

Order be transmitted forthwith to said agencies as notice of this directive.

HP1776

(Greenlaw)

NAME:

Hamilton P. Greenlaw, Jr.

TOWN: Stonington

HOUSE OF REPRESENTATIVES

READ AND PASSED

JUN 26 1975

Edwin [Signature]

CLERK

UP FOR CONCURRENCE

ORDER SENT FORTHWITH

IN SENATE CHAMBER

Rules Suspended

JUN 30 1975

READ AND PASSED

~~IN CONCURRENCE~~

HARRY N. CLAPHAM, Secretary

APPENDIX B

COMMITTEE RECOMMENDATIONS ON UNCLASSIFYING
POLICY POSITIONS IMMEDIATELY BELOW THE
COMMISSIONER LEVEL IN STATE GOVERNMENT

COMMITTEE RECOMMENDATIONS
ON UNCLASSIFYING POLICY POSITIONS
IMMEDIATELY BELOW THE COMMISSIONER LEVEL
IN STATE GOVERNMENT

<u>Agency and Position</u>	<u>Current Status</u>	<u>Committee Recommendations</u>
<u>Department of Agriculture</u>		
Commissioner	U	U
Director-Animal Industry Division	C	U
Director-Animal Welfare Division	C	U
Director-Inspections Division	C	U
Director-Markets Division	C	U
Director-Plant Industry Division	C	U
Director-Promotions Division	C	U
<u>Attorney General</u>		
Attorney General	U	No Change
Deputy Attorney General	U	
Deputy Attorney General	U	
<u>State Department of Audit</u>		
State Auditor	U	U
Deputy State Auditor	C	U
Departmental Division Director	C	C
Program Review and Evaluation Division Director	U	C
Municipal Division Director	C	C
<u>Baxter State Park</u>		
Director, Baxter State Park	C	U
Supervisor, Baxter State Park	C	U
Business Manager II	C	C
<u>Department of Business Regulation</u>		
Commissioner	U	U
Superintendent Bureau of Banks & Banking	U	U
Superintendent Bureau of Consumer Protection	U	U
Superintendent Bureau of Insurance	U	U
Bureau of Real Estate	C	U
Central Licensing Division	C	U

C=Classified
U=Unclassified

<u>Agency and Position</u>	<u>Current Status</u>	<u>Committee Recommendations</u>
<u>Department of Conservation</u>		
Commissioner	U	No Change
Director, Bureau of Forestry	U	
Director, Bureau of Geology	U	
Executive Director, Bureau of Land Use Regulation Commission	U	
Director, Bureau of Parks and Recreation	U	
Director, Bureau of Public Lands	U	
<u>Department of Educational and Cultural Services</u>		
Commissioner	U	U
Deputy Commissioner	C	U
State Librarian	U	U
Director, State Museum	U	U
Executive Director, Arts and Humanities	U	U
Director, Planning and Management Information	C	U
Director, Division of Federal Programs	C	U
Director of Finance	C	U
Director, Bureau of School Management	C	U
Director, Bureau of Instruction	C	U
Director, Bureau of Vocational Education	C	U

<u>Agency and Position</u>	<u>Current Status</u>	<u>Committee Recommendations</u>
<u>Department of Environmental Protection</u>		
Commissioner	U	U
Chief, Bureau of Air Quality Control	C	U
Director, Bureau of Land Quality Control	C	U
Director, Bureau of Water Quality Control	C	U
<u>Department of Executive</u>		
Positions in Executive Department proper and those auxiliary agencies such as State Planning Office, Office of Economic Opportunity, Office of State Employees Relations	U	U
<u>Department of Finance and Administration</u>		
Commissioner	U	No Change
State Controller	U	
State Purchasing Agent	U	
State Tax Assessor	U	
Director, Bureau of Public Improvements	U	
Director, Central Computer Services	C	
Director, Bureau of Alcoholic Beverages	U	
State Budget Officer	U	
<u>Department of Human Services</u>		
Commissioner	U	U
Deputy Commissioner	U	U
Director, Bureau of Maine's Elderly	U	U
Director, Bureau of Resource Development	U	U
Director, Bureau of Health	C	U
Director, Bureau of Rehabilitation	C	U
Director, Bureau of Social Welfare	C	U
Director, Comprehensive Health Planning	C	U

<u>Agency and Position</u>	<u>Current Status</u>	<u>Committee Recommendations</u>
<u>Human Rights Commission</u>		
Executive Director	U	No Change
All other employees	U	
<u>Department of Indian Affairs</u>		
Commissioner	U	U
Deputy Commissioner	C	U
<u>Industrial Accident Commission</u>		
Chairman	U	No Change
3 Commissioners	U	
<u>Department of Inland Fisheries and Game</u>		
Commissioner	U	U
Deputy Commissioner	C	U
Director, Bureau of Watercraft Registration and Safety	C	U
Chief Game Warden	C	U
Director, Safety and Snowmobile Registration	C	U
Chief, Engineering Division	C	U
Director, Information and Education Division	C	U
Chief, Planning and Coordination Division	C	U
Chief, Realty Division	C	U
Chief, Game Research and Management Division	C	U
Chief, Fishery Research and Management Division	C	U
Superintendent, Fish Hatchery Division	C	U

<u>Agency and Position</u>	<u>Current Status</u>	<u>Committee Recommendations</u>
<u>Maine State Lottery Commission</u>		
Director	U	U
Deputy Director	C	U
<u>Maine Guarantee Authority</u>		
Manager	U	No Change
<u>Department of Manpower Affairs</u>		
Commissioner	U	U
Commissioner, Employment Security Commission	U	U
Director, Manpower Adjudication Division	C	C*
Division Director, Manpower Affairs	C	C*
Director, Manpower Affairs Administrative Services	C	C*
Director, Manpower Research Division	C	C*
Director, Manpower Training Division	U	U
Director, Bureau of Labor & Industry	U	U
Executive Director, Maine Labor Relations Board	U	U
<u>Department of Marine Resources</u>		
Commissioner	U	U
Deputy Commissioner	C	U
Chief Coastal Warden	C	U
Director, Division of Marine Research	C	U
<u>Department of Mental Health & Corrections</u>		
Commissioner	U	U
Associate Commissioners	U	U
Director, Bureau of Mental Health	C	U
Superintendent AMHI	U	U
Superintendent BMHI	U	U
Director, Bureau of Mental Retardation	C	U
Superintendent, Pineland Center	C	U
Director, Bureau of Corrections	C	U
Superintendent, Maine Youth Center	C	U
Superintendent, Maine Correctional Center	C	U
Warden, Maine State Prison	C	U
Director, Division Probation & Parole	C	U

* Required to be classified as a condition of receiving Federal Grants.

<u>Agency and Position</u>	<u>Current Status</u>	<u>Committee Recommendations</u>
<u>Department of Military, Civil Emergency Preparedness, and Veterans Services</u>		
Commissioner and Adjutant General	U	No Change
Deputy Adjutant General	U	
Director, Bureau of Civil Emergency Preparedness	U	
Director, Bureau of Veterans Services	U	
<u>Department of Personnel</u>		
Director	U	No Change
Assistant Director	C	
<u>Department of Public Safety</u>		
Commissioner	U	No Change
Chief, Bureau of State Police	U	
Director, Bureau of Liquor Enforcement	U	
Director, Office of State Fire Marshal	U	
Director, Maine Criminal Justice Academy	U	
<u>Public Utilities Commission</u>		
Chairman	U	No Change
2 Commissioners	U	
<u>Maine State Retirement System</u>		
Executive Director	U	No Change
Assistant Executive Director	C	
<u>Secretary of State</u>		
Secretary of State	U	U
Deputy Secretaries of State	U	U
State Archivist	U	C
<u>Department of Transportation</u>		
Commissioner	U	U
Engineering Deputy Commissioner	C	U
Administrative Deputy Commissioner	C	U
Director, Bureau of Administrative Services	C	U
Director, Bureau of Planning	C	U
Chief Council, Bureau of Legal Affairs	C	U
Director, Bureau of Safety	C	U
Director, Bureau of Aeronautics	C	U
Director, Bureau of Waterways	C	U
Director, Bureau of Highways	C	U
<u>Department of Treasury</u>		
State Treasurer	U	U
Deputy Treasurer	C	U

APPENDIX C

5 MRSA §711-UNCLASSIFIED SERVICE

5 §711

CIVIL SERVICETitle 5CHAPTER 59UNCLASSIFIED SERVICE

Sec.

711. Composition of.§711. Composition of

The unclassified service comprises positions held by officers and employees who are:

1. Elective offices. Chosen by popular election or appointed to fill an elective office.

2. Officers chosen by Legislature. Officers who, under the Constitution or statutes, are chosen by the Legislature.

3. Appointed by Governor; certain official clerks. Heads of departments and members of boards and commissions required by law to be appointed by the Governor, bureau directors, and the official clerk of the State Liquor Commission, and the secretary of the Public Utilities Commission;

4. Judicial officers and employees. Officers and employees in the judicial service of the State.

5. Legislative officers and employees. Officers and employees of the Senate and House of Representatives of the Legislature.

6. Military. Officers and enlisted men in the National Guard and Naval Militia of the State.

7. Governor's office. The private secretary, assistant secretary and stenographers in the Governor's office, and the employees working at the Blaine Mansion.

8. Unorganized territory, vocational schools and the state institutions. Officers and employees of the unorganized territory school system and the teachers and principals of the school systems in state vocational schools and state institutions;

[9. Repealed]

10. Deputies, assistants, staff attorneys and secretary to the Attorney General of the Department of Attorney General. Deputies, assistants, staff attorneys and secretary to the Attorney General of the Attorney General's Department.

11. Officials of the Department of Mental Health and Corrections. The associate commissioners, the directors of Mental Health, of Mental Retardation and of Corrections, the Warden of the State Prison and the superintendents of the Augusta Mental Health Institute, of the Bangor Mental Health Institute and of the Pineland Center.

APPENDIX D

DRAFT LEGISLATION TO IMPLEMENT
RECOMMENDATIONS IN THIS REPORT

107TH LEGISLATURE
STATE GOVERNMENT COMMITTEE

AN ACT to Establish and Apply a Policy on the Classification of Major Policy-influencing Positions Below the Head of State Department and Agencies.

Sec. 1. 5 MRSA §81, 1st-¶ as last amended by PL 1975, c. 771, §31 is further amended to read:

The Department of the Secretary of State, as heretofore established, shall consist of the Secretary of State, the State Archives and such other state departments and agencies as are by law subject to the direction of the Secretary of State. The Secretary of State shall appoint a State Archivist subject to the Personnel Law, and deputy secretaries of state who shall serve at the pleasure of the secretary. The secretary shall keep his office at the pleasure of seat of government; have the custody of the state seal and preserve all records in such office, at the expense of the State. The secretary designate one of his deputies as first deputy secretary of state. When a vacancy happens in the office of Secretary of State during the recess of the Legislature, the first deputy secretary of state shall act as Secretary of State until a Secretary of State is elected by the Legislature. Such deputy shall take the oath required of the elected Secretary of State and have the same compensation while he performs the duties of the office.

Sec. 2. 5 MRSA §93 as last amended by PL 1975, c. 771, §93 is further amended to read:

§93 State Archivist

The Secretary of State shall appoint a State Archivist who shall be qualified by special training or experience in archival

or historical work. He shall hold office at the pleasure of the secretary for a term of 6 years from the date of his appointment and until his successor has been appointed and qualified. The compensation of the State Archivist shall be fixed by the Governor.

~~This section shall not affect the term of the person holding office as State Archivist on October 17, 1969.~~

Sec. 3. 5 MRSA §121, 3rd ¶ as last amended by PL 1975, c. 771, §34 is further amended to read:

~~The chief clerk in the office of the~~ The Treasurer of State shall designate a be-designated-as "deputy treasurer of state" to serve at the pleasure of the Treasurer of State. In the event of a vacancy in the office of Treasurer of State, the deputy treasurer of state shall act as the Treasurer of State until a Treasurer of State is elected by the Legislature. During the absence or disability of the Treasurer of State, the deputy treasurer of state shall perform the duties of the office. When a vacancy occurs, he shall give bond to the State, with sureties, to the satisfaction of the Governor, for the faithful discharge of his trust.

Sec. 4. 5 MRSA §242, 1st ¶ is amended to read:

The Department of Audit shall be organized in the manner the State Auditor may deem best suited to the accomplishment of its functions. It shall have such auditors, assistants, investigators, and employees as the State Auditor may require, but they shall be subject to the Personnel law, except for the deputy state auditor who shall be appointed by and serve at the pleasure of the State Auditor.

Sec. 5. 5 MRSA §242-B, sub-§1 as enacted by P.L. 1973, c.

1. Establishment. The State Auditor is authorized to create a Program Review and Evaluation Division within the Department of Audit. ~~He shall appoint a~~ The director of that division ~~to serve at his pleasure. The director shall be chosen without reference to party affiliation and solely on the ground of fitness to perform the duties of his office and~~ shall be appointed subject to the Personnel Law and shall have had not less than two years of experience as a professional accountant or auditor.

The director may employ, with the approval of the State Auditor and subject to the Personnel Law, such employees as may be necessary to carry out the duties of the division. The director shall have available in the division employees who are expert in analyzing and conducting cost benefit studies of government programs.

Sec. 6. 5 MRSA §282, 1st ¶ as last amended by PL 1975, c. 771, §51-A is further amended to read:

The commissioner may, with the approval of the Governor appoint a deputy commissioner, who shall be the chief of one of the department bureaus and shall perform the duties of the commissioner during the commissioner's absence, in addition to his regular duties. The compensation and expense of the deputy commissioner shall be paid from any available funds appropriated for the use of the bureau of which he is chief. The commissioner may appoint and employ the such bureau chiefs, except the Director of Central Computer Services ~~the Bureau of Alcoholic Beverages and the State Purchasing Agent, as may be necessary, with the approval of the Governor.~~ The bureau chiefs shall be under the immediate supervision, direction and control of the commissioner and shall serve at his pleasure and perform such duties as he may prescribe, except as otherwise provided by law.

Sec. 7a. 5 MRSA §678, 1st ¶ as last amended by P.L. 1975, c. 366 is further amended to read:

An appointing authority may dismiss, suspend or otherwise discipline an employee for cause. This right is subject to the right of appeal and arbitration of grievances set forth in section 751 to 753; and said sections 751 to 753 shall apply to any employee who has satisfactorily completed an initial probationary period. This paragraph shall not apply to an employee appointed to a major policy-influencing position listed in section 711, subsection 2, paragraph B.

Sec. 7. 5 MRSA §283, sub-§4, as amended by P.L. 1975, c. 771, §51-B is further amended to read:

4. Bureau of Purchases. Bureau of Purchases, the head of which shall be the State Purchasing Agent, who shall be appointed by the commissioner ~~with the approval of the Governor and subject to review by the Joint Standing Committee on State Government and to confirmation by the Legislature.~~

Sec. 8. 5 MRSA §711 as last amended by P.L. 1975, c. 777, §7 is repealed and replaced as follows:

§711. Unclassified service

The unclassified service comprises positions held by officers and employees as follows:

1. Certain elective, legislative, executive, judicial, and other officers and employers, as follows:

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

B. Officers who, under the Constitution or statutes, are chosen by the Legislature;

C. Heads of departments and members of boards and commissions required by law to be appointed by the Governor, some bureau directors,

and the secretary of the Public Utilities

Commission;

D. Officers and employees in the judicial service of the State;

E. Officers and employees of the Senate and House of Representatives of the Legislature;

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

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

H. Officers and employees of the unorganized territory school system and the teachers and principals of the school systems in state vocational schools and state institutions;

I. Deputies, assistants, staff attorneys, research assistants, and the secretary to the Attorney General of the Attorney General's Department.

2. Major policy-influencing positions.

A. In the departments and agencies of State Government, officers and employees in positions in the first and 2nd organizational levels below the department or agency head frequently are able to substantially influence policy.

Because of such ability, and consistent with subsection 1 which exempts other policy-making and policy-influencing positions, there is a presumption that such positions should be exempt from the Personnel Law--that is, they should be unclassified so that they are able to be more responsive to the public. The determinations of whether such positions do influence policy and whether they will be unclassified shall be done through the legislative process, and if it is determined that they shall be unclassified then such determination shall be recorded in the Statutes.

The determination of whether a position influences policy shall be made separately for each position, taking account of appropriate factors which may include the size and nature of the budget and the number and type of personnel supervised; the salary and organizational placement of such position; the extent to which the position is permitted to exercise discretion in making decisions; the nature and extent of the positions' relationship to the public and to other elected and appointed positions; and implications for continuity and quality of programs and for personnel policies.

The determination of whether a position found to be policy-influencing should be unclassified shall also be made separately for each position, taking account of appropriate factors which shall include whether the position is required to be classified as a condition of receiving grants-in-aid and whether the position should have the protection of the Personnel Law due to the sensitivity of functions it performs or for other reasons.

Because of the importance of these positions, it is the policy of the State that they be made as available as possible to citizens from private and other public employment. To facilitate such availability, the State shall make available fringe benefits that are exactly

comparable to fringe benefits available to persons under the Personnel Law.

B. The following positions in the following departments are major policy-influencing positions; such positions and their successor positions shall be subject to this subsection, notwithstanding any other provision of Law:

Department of Agriculture

Director-Animal Industry Division

Director-Animal Welfare Division

Director-Inspections Division

Director-Markets Division

Director-Plant Industry Division

Director-Promotions Division

Department of the Attorney General

Deputy Attorneys General

Assistant Attorneys General

Department of Audit

Deputy State Auditor

Baxter State Park Authority

Director, Baxter State Park

Supervisor, Baxter State Park

Department of Business Regulation

Superintendent, Bureau of Banks and Banking

Superintendent, Bureau of Consumer Protection

Superintendent, Bureau of Insurance

Director of Real Estate

Director, Licensing Division

Department of Conservation

Director, Bureau of Forestry

Director, Bureau of Geology

Executive Director, Land Use Regulation Commission

Director, Bureau of Parks and Recreation

Director, Bureau of Public Lands

Department of Educational and Cultural Services

Deputy Commssioner

State Librarian

Director, State Museum

Executive Director, Arts and Humanities

Director, Planning and Management Information

Director, Federal Programs

Director, Division of Finance

Associate Commissioner, Bureau of School Management

Associate Commissioner, Bureau of Instruction

Director, Bureau of Vocational Education

Department of Environmental Protection

Chief, Bureau of Air Quality Control

Director, Bureau of Land Quality Control

Director, Bureau of Water Quality Control

Department of Finance and Administration

State Controller

State Purchasing Agent

State Tax Assessor

Director, Bureau of Public Improvements

Director, Bureau of Alcoholic Beverages

State Budget Officer

Department of Human Services

Deputy commissioners

Director, Bureau of Maine's Elderly

Director, Bureau of Resource Development

Director, Bureau of Health

Director, Bureau of Rehabilitation

Director, Bureau of Social Welfare

Director, Comprehensive Health Planning

Human Rights Commission

Executive Director

Department of Indian Affairs

Deputy Commissioner

Department of Inland Fisheries and Wildlife

Deputy Commissioner

Director, Bureau of Watercraft Registration and Safety

Chief Game Warden

Director, Safety and Snowmobile Registration

Chief, Engineering Division

Director, Information and Education Division

Chief, Planning and Coordination Division

Chief, Realty Division

Chief, Game Research and Management Division

Superintendent, Fish Hatchery Division

Maine State Lottery Commission

Deputy Director

Department of Manpower Affairs

Director, Manpower Adjudication Division

Division Director, Manpower Affairs

Director, Manpower Affairs Administrative Services

Director, Manpower Research

Director, Manpower Training Division

Director, Bureau of Labor

Department of Marine Resources

Deputy Commissioner

Chief Coastal Warden

Director, Division of Marine Research

Department of Mental Health and Corrections

Associate Commissioners

Director, Bureau of Mental Health

Superintendent, Augusta Mental Health Institute

Superintendent, Bangor Mental Health Institute

Director, Bureau of Mental Retardation

Superintendent, Pineland Center

Director, Bureau of Corrections

Superintendent, Maine Youth Center

Superintendent, Maine Correctional Center

Warden, Maine State Prison

Director, Probation and Parole

Department of Defense and Veteran's Services

Deputy Adjutant General

Director, Bureau of Civil Emergency Preparedness

Director, Bureau of Veterans Services

Department of Public Safety

Chief, Bureau of State Police

Director, Bureau of Liquor Enforcement

Director, Office of State Fire Marshal

Director, Maine Criminal Justice Academy

Secretary of State

Deputy secretaries of state

State Archivist

Department of Transportation

Deputy commissioners

Director, Bureau of Administrative Services

Director, Bureau of Planning

Chief Counsel, Bureau of Legal Services

Director, Bureau of Safety

Director, Bureau of Aeronautics

Director, Bureau of Waterways

Director, Bureau of Highways

Department of Treasury

Deputy Treasurer

C. Except as otherwise provided by law, the head of the department or agency in which a major policy-influencing position is located shall have the power to appoint and remove persons to and from such positions on or after January 1, 1978, provided that if any position is subject to the Personnel Law on December 31, 1977, then the incumbent of such position on December 31, 1977 may:

(1) retain his appointment subject to the Personnel Law until January 1, 1982, or

(2) if the incumbent is appointed for a term, retain the position until the earlier of either the expiration of the term or January 1, 1982.

Any person permanently appointed to a classified position who accepts an appointment to a major policy-influencing position after December 31, 1977 shall have the right, for 6 months subsequent to appointment to such major policy-influencing position, to be restored to the classified position from which he shall have been promoted or to a position equivalent thereto in salary grade in an agency, without impairment of his personnel status or the loss of seniority, retirement or other rights to which uninterrupted service in the classified position would have entitled

him. Provided, that if his service in such unclassified supervisory position shall have been terminated for cause, his right to be so restored shall be determined by the Personnel Board. During such 6-month period, the appointing authority shall have the right to temporarily appoint a person to such position under the Personnel Law, provided that funds are available for such appointment and that it is consistent with the law.

D. Beginning with the effective date of this law, all persons incumbering major policy-influencing positions shall be entitled to the following:

(1) Exactly the same participation in and accrual and use of all fringe benefits available to persons appointed at the next closest pay range to positions under the Personnel Law; such fringe benefits shall include vacation, sick, and administrative leave, health and life insurance, and retirement;

(2) Exactly the same transfer of all fringe benefits rights to and from employment under the Personnel Law as if such transfer were between 2 positions under the Personnel Law;

3. Other officers and employees. Other officers and employees as elsewhere provided by statute or regulation which is consistent with this section.

Sec. 9. 5 MRSA §3304, sub-§1 as amended by P.L. 1973, c. 679, is further amended to read:

1. Director. The executive head of the State Planning Office shall be the director and shall be appointed by the Governor to serve ~~a-term-coterminous-with~~ at the pleasure of the Governor, ~~subject-to-removal-for-cause.~~ The director shall be paid a salary fixed by the Governor.

Sec. 10. 5 MRSA §5004, sub-§1 as last amended by P.L. 1975, c. 771, §90 is further amended to read:

1. Appointment. The Governor shall appoint a full-time Director of the Office of Energy Resources. The director shall serve ~~a-term-coterminous-with-that~~ at the pleasure of the Governor and until his successor is appointed and qualified, ~~subject to-removal-for-cause-by-the-Governor.~~

Sec. 11. 7 MRSA §1 as last repealed and replaced by PL 1975, c. 771, §96 is amended to read:

§1. Commissioner; salary; employees; deputy

The Department of Agriculture, as heretofore established and hereinafter in this Title called the "department," shall be maintained for the improvement of agriculture and the advancement of the interests of husbandry, and shall consist of the Commissioner of Agriculture, hereafter in this Title called the "commissioner," and the following as heretofore created and established: The Maine Dairy and Nutrition Council Committee, the Maine Milk Commission, the Maine Potato Commission, the Seed Potato Board, Milk Tax Committee, the Soil and Water Conservation Commission, the Harness Racing Commission and the Board of Veterinary Examiners. The commissioner shall be appointed by the Governor, subject to review by the Joint

Standing Committee on Agriculture and to confirmation by the Legislature, and shall hold office during the pleasure of the Governor. He shall receive his actual expenses incurred in the performance of his official duties. He may employ such clerical labor as may be required, subject to the Personnel Law, and he may expend such sums for postage, telephone, telegraph and other general office expenses as may be necessary in the performance of his duties, the same to be paid out of any money appropriated by the Legislature for such purpose. The commissioner may~~7-with-the-approval-of-the-Governor7~~ appoint a deputy commissioner of agriculture, who shall be the chief of one of the bureaus in the Department of Agriculture, and shall perform the duties of the commissioner during his absence, in addition to his duties as chief of a bureau. The deputy commissioner's compensation and expenses shall be paid from any funds appropriated for the use of the bureau of which he is chief.

Sec. 12. 7 MRSA §5 is amended by P.L. 1975, c. 771, §97 is further amended to read:

§5. Deputies

The commissioner may~~7-with-the-approval-of-the-Governor7~~ appoint and fix the compensation of a chief deputy and such other deputies as in his judgment are required to assist him, and to enable him to carry out all laws, the execution of which is entrusted to him. The chief deputy ~~shall hold office during good behavior~~ and such other deputies shall hold office during the pleasure of the commissioner. Their compensation and expenses shall be paid from any funds appropriated for the use of the commissioner in the execution of said laws.

Sec. 13. 8 MRSA §354, sub-§1, paragraph B, is amended to read:

B. Act as the chief administrative officer, having general charge of the office and records and to employ ~~7-with-the-approval-of-the-commission-and-subject to-the-Personnel-Law~~ such personnel as may be necessary to fulfill the purposes of this chapter; such personnel shall be employed with the approval of the commission and subject to the Personnel Law, except for the deputy director who shall be appointed by and serve at the pleasure of the director.

Sec. 14. 10 MRSA §8003, sub-§1 as enacted by P.L. 1975, c. 767, §9 is amended to read:

1. Licensing division. There is created a Central Licensing Division, hereinafter called the "licensing division," which shall constitute a division of the Department of Business Regulation. The Commissioner of Business Regulation shall ~~employ~~ appoint a Director of the Central Licensing Division who shall serve at the commissioner's pleasure; and shall employ other such clerical and technical assistance as are necessary to discharge the licensing and administrative duties imposed by this section and shall outline their duties and fix their compensation, subject to the Personnel Law.

Sec. 15. 12 MRSA §904 as amended by P.L. 1965, c. 226, §19 is further amended to read:

§904. Agents and representatives

The Baxter State Park Authority shall appoint agents or representatives to carry out this subchapter. All ~~appointed~~ agents or representatives shall be appointed and hold office under the rules of the Personnel Law, except for the director

and Supervisor of the State Park. They shall be sworn to the faithful discharge of their duties and a certificate thereof shall be returned and filed in the office of the chairman of the authority. They ~~shall be appointed by the authority in accordance with the Personnel Law and~~ may be allowed actual necessary expenses of travel.

Sec. 16. 12 MRSA §1951, 1st-¶ as last amended by P.L. 1975, c. 771, §142 is further amended to read:

The Commissioner of Inland Fisheries and Wildlife shall be appointed by the Governor subject to review by the Joint Standing Committee on Fisheries and Wildlife and to confirmation by the Legislature, and shall serve during the pleasure of the Governor. The commissioner shall appoint, to serve at his pleasure, persons, ~~subject to the Personnel Law, a deputy commissioner of Inland Fisheries and Wildlife.~~ to the following positions: deputy commissioner of Inland Fisheries and Wildlife; Chief Game Warden; Chief, Engineering Division; Director, Information and Education Division; Chief, Planning and Coordination Division; Chief, Realty Division; Chief, Game Research and Management Division; Chief, Fishing Research and Management Division; Superintendent, Fish Hatchery Division; Director, Bureau of Watercraft Registration and Safety; and Director, Safety and Snowmobile Registration. The commissioner shall make a report to the Governor on or before the 31st day of December of each year for the year ending June 30th prior thereto.

Sec. 17. 12 MRSA §3451, 3rd-¶ as repealed and replaced by P.L. 1973, c. 513, §3 is amended to read:

The commissioner shall organize the department into such bureaus, divisions or other administrative units as he deems necessary to carry out the duties of the department. The com-

missioner shall designate ~~an-appropriate-administrative-officer~~
~~in-the-department~~ a deputy commissioner to serve as commissioner
 in the absence or disability of the commissioner or in the case
 of vacancy in the office of commissioner. The commissioner
shall appoint persons to serve at his pleasure to the following
positions: deputy commissioner; chief coastal warden; and Direc-
tor, Division of Marine Research.

Sec. 18. 12 MRSA §3502, sub-§4, 1st sentence is amended to
 read:

← The commissioner shall hire all necessary employees of the
 department, subject to the Personnel Law, except as provided
in Title 12, section 3451.

Sec. 19. 12 MRSA §3651, sub-§1, ¶ A as enacted by P.L. 1969,
 c. 408, §1 is amended to read:

A. Any person appointed a coastal warden shall first qualify
 under the written code of operation prepared by the com-
 missioner, and approved by the State Personnel Board
 appointed under Title 5, chapters 51 and 61, except as pro-
vided in Title 12, section 3451.

Sec. 20. 12 MRSA §5013 as last amended by P.L. 1975, c. 521,
 §2 is further amended to read:

The Department of Conservation shall be composed of the
 Land Use Regulation Commission and the following bureaus:

1. Land Use Regulation Commission. The Maine Land Use
 Regulation Commission as established by chapter 206-A, which
 shall be under the direction and supervision of a director who
 shall be qualified by experience in planning and administration
 consistent with section 681. The director shall be appointed by,
and serve at the pleasure of, the commissioner, ~~with the approval~~

~~of-the-Governor,-for-a-term-coterminous-with-the-commissioner,-~~
~~subject-to-removal-for-cause-by-the-commissioner-with-the~~
~~approval-of-the-Governor;~~

2. Bureau of Forestry. The Bureau of Forestry, which shall be under the direction and supervision of a director, who shall be qualified by training, experience and skill in forestry. The director shall be appointed by and serve at the pleasure of the commissioner, ~~with-the-approval-of-the-Governor,-to-serve~~
~~for-a-term-coterminous-with-the-commissioner,-subject-to-removal~~
~~for-cause-by-the-commissioner-with-the-approval-of-the-Governor.~~

3. Bureau of Parks and Recreation. The Bureau of Parks and Recreation, which shall be under the direction and supervision of a director. The director shall be appointed by, and serve at the pleasure of, the commissioner, ~~with-the-approval~~
~~of-the-Governor,-to-serve-for-a-term-coterminous-with-the-com-~~
~~missioner,-subject-to-removal-for-cause-by-the-commissioner-with~~
~~the-approval-of-the-Governor.~~

4. Bureau of Public Lands. The Bureau of Public Lands, which shall be under the direction and supervision of a director. The director shall be appointed by and serve at the pleasure of the commissioner ~~with-the-approval-of-the-Governor,-to-serve~~
~~for-a-term-coterminous-with-the-commissioner,-subject-to-re-~~
~~moval-for-cause-by-the-commissioner-with-the-approval-of-the~~
~~Governor.~~

5. Bureau of Geology. The Bureau of Geology shall consist of the Maine Mining Bureau as established by Title 10, section 2101 and the Division of Science, Technology and Mineral Resources as established by Title 12, section 531. The Bureau

of Geology shall be under the direction and supervision of a director who shall be appointed by and serve at the pleasure of the commissioner.

Every person appointed as a bureau director or in another supervisory capacity in the department shall have experience and skill in the field of the functions of such position. ~~So far as is practicable in the judgment of the commissioner, appointments to such positions shall be made by promoting employees of the State serving in positions which are classified and in every instance when a person is promoted from a classified position upon termination of his service in such classified supervisory position, the employee shall, if he shall so request, be restored to the classified position from which he shall have been promoted or to a position equivalent thereto in salary grade in the same state agency, without impairment of his personnel status or the loss of seniority, retirement or other rights to which uninterrupted service in the classified position would have entitled him, provided that if his service in such unclassified supervisory position shall have been terminated for cause, his right to be so restored shall be determined by the Personnel Board.~~

Sec. 21. 15 MRSA §2712, 3rd-¶, as last repealed and replaced by P.L. 1975, c. 756, §6, is amended to read:

The director of the center shall be called the superintendent. The superintendent shall be appointed by and serve at the pleasure of the commissioner. The superintendent of the center may appoint 2 assistant superintendents, subject to the Personnel Law. An assistant superintendent designated by the superintendent, or such other employee designated by the superintendent in the event

that there are no assistant superintendents, shall have the powers, perform the duties and be subject to all the obligations and liabilities of the superintendent when the superintendent is absent from the center or unable to perform the duties of the office or when the office of superintendent is vacant.

Sec. 22. 20 MRSA §1-B as amended by P.L. 1975, c. 771, §168 is further amended to read:

§1-B. Department; organization

1. State Museum Bureau. The State Museum Bureau shall be under the direction of a director who shall be qualified by training or by experience in museum work and shall be appointed by and serve at the pleasure ~~the-Maine-State-Museum-Commission with-the-approval~~ of the commissioner ~~to-serve-for-an-indefinite term, subject-to-removal-for-cause.~~ The compensation of the director shall be fixed by the Governor; and

2. Arts and Humanities Bureau. The Arts and Humanities Bureau which shall be under the direction of a director who shall be qualified by training or by experience and shall be appointed by and serve at the pleasure of ~~the-Maine-State-Commission-on-the-Arts-and-the-Humanities-with-the-approval~~ the commissioner ~~to-serve-for-an-indefinite-term, subject-to-removal-for-cause.~~ The compensation of the director shall be fixed by the Governor ~~and-Council~~; and

3. Maine State Library Bureau. The Maine State Library Bureau, which shall be known as the Maine State Library and which shall be under the direction of a director who shall be qualified by training or by experience in library work and who shall be known as the State Librarian, appointed by and serving at

the pleasure of the commissioner ~~with-the-advice-and-consent of-the-Governor-and-Council-to-serve-for-an-indefinite-term,~~ ~~subject-to-removal-for-cause.~~ The compensation of the director shall be fixed by the Governor; and

4. Bureau of Vocational Education. The Bureau of Vocational Education which shall be under the direction of a director appointed by and serving at the pleasure of the commissioner, ~~subject-to-the-Personnel-Law;~~ and

5. Other. Such other bureaus as the commissioner deems necessary to fulfill the duties of the department, each of which shall be under the direction of a person appointed by the commissioner, ~~subject-to-the-Personnel-Law,~~ to serve at the pleasure of the commissioner: all such persons shall be subject to the Personnel Law, except for persons in the following positions: Deputy Commissioner, Educational and Cultural Services; Associate Commissioner, Bureau of Instruction; Associate Commissioner, Bureau of School Management; Director, Planning and Management Information; Director, Federal Programs; and Director, Division of Finance.

Sec. 23. 20 MRSA §102, 1st-¶, 2nd sentence as last repealed and replaced by P.L. 1971, c. 610, §7, is amended to read:

The commissioner is authorized to hire whatever personnel he deems necessary, ~~subject-to-the-Personnel-Law,~~ to fulfill the duties of the department; such personnel shall be subject to the Personnel Law, except as provided in Title 20, section 1-B, subsection 5.

Sec. 24. 22 MRSA §1, 3rd and 4th ¶'s as last amended by P.L. 1975, c. 755, §4 and P.L. 1975, c. 771, §209 are amended to read:

The commissioner may employ such bureau and division heads, deputies, assistants and employees as may be necessary to carry out the work of the department. All personnel of the department shall be under the immediate supervision, direction and control of the commissioner. Such personnel shall be employed subject to the Personnel Law, except the deputy commissioners, ^{also} the director, Bureau of Resource Development; and the director, Bureau of Maine's Elderly; the director, Bureau of Health; the director, Bureau of Rehabilitation; the director, Bureau of Social Welfare; and the director, State Comprehensive Health Planning Agency ~~and-as-otherwise-designated-by-statute~~. Deputy commissioners shall be appointed by the commissioner, ~~with-the advice-and-consent-of-the-Governor-and-Executive-Council~~, and shall serve at the pleasure of the commissioner.

The director, Bureau of ~~Human-Services~~ Resource Development and the director, Bureau of Maine's Elderly, shall be appointed by the commissioner, after consultation with the Maine Committee on Aging and the Maine Human Services Council, ~~with the-advice-and-consent-of-the-Governor~~. Each of these directors shall be appointed and serve in the unclassified service ~~for-a term-coterminous-with-the-commissioner~~. ~~They-shall-serve~~ at the pleasure of the commissioner, ~~subject-to-removal-by-the-commissioner-with-the-advice-and-consent-of-the-Governor~~. Any vacancy in each of these positions shall be filled by appointment as above for a like term.

Sec. 25. 22 MRSA 3173, 1st-¶ as enacted by P.L. 1973, c. 790, §2 is amended to read:

The department is authorized to administer programs of aid, medical or remedial care and services for medically indigent persons. It is empowered to employ~~7-subject-to-the-Personnel-Law7~~ such assistants as may be necessary to carry out this program and to coordinate their work with that of the other work of the department. Such assistants shall be subject to the Personnel Law, except for the Director, Bureau of Social Welfare.

Sec. 26. 22 MRSA §4702, 3rd-¶ as last repealed and replaced by P.L. 1965, c. 340, §1, is amended to read:

The commissioner may employ~~7-subject-to-the-Personnel-Law7~~ the necessary assistance to carry out the duties and responsibilities of the Department of Indian Affairs. All such employees shall be subject to the Personnel Law, except for the deputy commissioner of Indian Affairs.

Sec. 27. 23 MRSA §4206, sub-§4 as amended by P.L. 1973, c. 186, §2 is further amended to read:

4. Personnel. The commissioner may, subject to the Personnel Law, appoint such deputies, directors, assistants, general counsel and other officers and employees as may be needed for the performance of his duties. Such appointments shall be subject to the Personnel Law, except for directors of the following organizational units who shall serve at the pleasure of the commissioner: deputy commissioners of transportation; and the directors of the Bureau of Administrative Services, Bureau of Transportation Planning and Services, Bureau of Aeronautics, Bureau of Highways, Bureau of Waterways, Bureau of Legal Affairs, and Bureau of Safety.

Sec. 28. 25 MRSA §1501, 1st ¶ as last amended by P.L. 1975, c. 771, §262 is amended to read:

The Commissioner of Public Safety, with the advice and consent of the Governor and subject to review by the Joint Standing Committee on State Government and to confirmation by the Legislature, shall appoint a Chief of the State Police, as ~~heretofore-appointed,~~ to serve for a term of 4 years unless removed for cause. ~~Such-appointment-shall-be-made-from-the-commissioned-officer-ranks-of-the-State-Police.--He-may-be-removed-by-impeachment-or-by-the-Governor-on-the-address-of-both-branches-of-the-Legislature-~~

Sec. 29. 25 MRSA §2396, 1st ¶, 2nd sentence as last amended by P.L. 1975, c. 579, §4 is further amended to read:

The Commissioner of Public Safety shall appoint, as State Fire Marshal a person experienced in fire prevention work who may be removed ~~for-cause~~ by the Commissioner.

Sec. 30. 25 MRSA §2804-A, 1st ¶ as enacted by P.L. 1975, c. 579, §9 is amended to read:

The Commissioner of Public Safety, with the ~~approval~~ advice of the board of trustees, shall appoint a director, who shall be the administrator of the academy. Qualifications of the director shall be established by the commissioner and the board jointly. The salary of the director shall be established by the commissioner and the board jointly. The director ~~may-be-dismissed-for-cause by the-commissioner~~ shall serve at the pleasure of the commissioner ~~with-the-approval-of-the-board.~~

Sec. 31. 26 MRSA §41 last amended by P.L. 1975, c. 771, §269 is further amended to read:

§41. Director; personnel; salaries; expenses

A Bureau of Labor within the Department of Manpower Affairs, as heretofore established and hereinafter in this Title called the "bureau," shall be maintained under the direction of an officer whose title shall be Director of the Bureau of Labor and state factory inspector, hereinafter in this Title, except in chapter 13, called the "director." He shall be appointed by the Commissioner of Manpower Affairs, ~~with-the-advice-and-con-~~
~~sent-of-the-Governor, for-a-term-of-3-years,~~ and shall hold office ~~until-his-successor-is-appointed-and-qualified at~~
the pleasure of the commissioner. He shall have an office in the State Capitol. He shall appoint, subject to the Personnel Law, such employees as may be necessary and a deputy who shall be clerk of the bureau and deputy state factory inspector. ~~The~~
~~director-and-deputy-state-factory-inspector-shall-receive-their~~
~~actual-traveling-expenses.--The-director-shall-appoint-a-woman~~
~~factory-inspector.--All-expenses-of-the-department-shall-be~~
~~audited-and-paid-as-provided-by-law.~~

Sec. 32. 26 MRSA §795 as enacted by P.L. 1969, c. 478, §1 is amended to read:

§795. Committee officers

The chairman of the committee shall be appointed by the Governor and serve at the pleasure of the Governor. The chairman shall select a vice-chairman from the membership. The chairman shall be empowered to name an executive board of no more

than 5 members from the full membership and shall himself head that board. ~~Executive-board-members~~ The Governor shall appoint a full-time executive secretary, ~~subject to the Personnel Law,~~ who shall serve at the pleasure of the Governor, and designate the duties and responsibilities of the position. The executive board members may appoint such other personnel, subject to the Personnel Law, as may be necessary for the efficient performance of the duties prescribed by this subchapter.

Sec. 33. 26 MRSA §968, sub-§2 as last amended by P.L. 1975, c. 564, §23 and 1975, c. 771, §282 is amended to read:

2. Executive Director. An Executive Director of the Maine Labor Relations Board shall be appointed by the board to serve at their will and pleasure. The person so appointed shall be ~~trained in the law and~~ experienced in the field of labor relations. He shall perform the duties designated by statute and such other duties as shall from time to time be assigned to him by the board. He shall serve as secretary of the board and shall maintain a record of all proceedings before the board. The executive director shall receive such salary as shall be fixed by the Governor. No board member shall serve as executive director.

Sec. 34. 26 MRSA §1401, sub-§2 as enacted by P.L. 1971, c. 620, §12 is amended to read:

2. Personnel. Appoint to serve at his pleasure, and provided such appointments are consistent with the law, persons to serve as directors or executive directors of the following organizations: Manpower Adjudication, Manpower Affairs, Manpower Affairs Administrative Services, Manpower Research, Manpower Training, and Labor; Transfer personnel within the department to

insure the efficient utilization of department personnel subject to the Personnel Law;

Sec. 35. 28 MRSA §57, 1st-¶, as enacted by P.L. 1975, c. 741, §4 is amended to read:

The Commissioner of Finance and Administration, ~~with the advice and consent of the State Liquor Commission,~~ shall appoint a Director of the Bureau of Alcoholic Beverages ~~whose term of office shall be continuous, subject only to removal for cause by the commission and,~~ who shall serve at the pleasure of the Commissioner of Finance and Administration. The salary of the director shall be fixed by the Governor.

Sec. 36. 32 MRSA §4051-A, 3rd and 4th ¶ as last repealed and replaced by P.L. 1975, c. 767, §51 are amended to read:

A majority of the members of the commission shall constitute a quorum for a transaction of business under this chapter. The commission shall annually elect a chairman, other than the director, from its members. The commission shall establish guidelines, policies, rules and regulations by which it shall carry out the duties prescribed by this chapter.

The director shall be ~~employed by~~ appointed by and serve at the pleasure of the Commissioner of Business Regulation, ~~with the advice of the commission, subject to the Personnel Law.~~ The director shall be responsible for the management of the commission's affairs within the guidelines, policies, rules and regulations established by the commission. With the approval of the Commissioner of Business Regulation and subject to the Personnel Law, the commission may employ such clerical assistants, technical assistants and investigators as it deems necessary.

Sec. 37. 34 MRSA §1, 4th ¶ as enacted by P.L. 1975, c. 771, §11, 1st and 2nd sentences, are amended to read:

The commissioner, ~~subject to the approval of the Governor,~~ shall appoint and set the salaries for the associate commissioners and for the Warden of the Maine State Prison. The appointments shall be for indeterminate terms and until successors are appointed and qualified or during the pleasure of the commissioner.

Sec. 38. 34 MRSA §526 as last repealed and replaced by P.L. 1975, c. 755, §8 is amended to read:

§526. Director, duties, institutional heads

The commissioner shall, with the advice of the Correctional Advisory Commission, appoint and set the salary, ~~subject to the approval of the Governor and Council,~~ for a Director of Corrections who shall be a person with training and experience in correctional administration or who has had satisfactory experience in the direction of work of a comparable nature. The appointment shall be for an indeterminate term and until a successor is appointed and qualified or during the pleasure of the commissioner. It shall be the duty of the Director of Corrections to carry out the purposes of the bureau.

Sec. 39. 34 MRSA §551 is amended to read:

§551. Warden; duties; deputy wardens

The head of the State Prison shall be called the warden. He shall be appointed by the commissioner for an indeterminate term and until a successor is appointed and qualified or during the pleasure of the commissioner. He shall have deputies, to be appointed by him subject to the Personnel Law, who, when the office of warden is vacant or the warden is absent from the prison or unable to perform the duties of his office, shall have

the powers, perform the duties and be subject to all the obligations and liabilities of the warden. The warden shall not carry on or be concerned in trade or commerce during his continuance in office. He shall reside constantly within the precincts of the prison and have the care, custody and charge thereof, and of the convicts therein, in conformity to their sentences, and of the lands, buildings, machines, tools, stock, provisions and every other kind of property belonging to or within its precincts, under the direction and control of the department.

Sec. 40. 34 MRSA §1591, 2nd-¶ as repealed and replaced by P.L. 1969, c. 319, §3 is amended to read:

The Division of Probation and Parole shall be under the direction of the Director of Probation and Parole, in this chapter called the "director," who shall be appointed by the ~~Director of Corrections, subject to the Personnel Law~~ and serve at the pleasure of the commissioner.

Sec. 41. 34 MRSA §2002, as repealed and replaced by P.L. 1975, c. 755, §7 is amended to read:

§2002. Director; duties

The commissioner shall, with the advice of the Committee on Mental Health, appoint and set the salary ~~subject to the approval of the Governor and Council~~, for a Director of Mental Health who shall be a person with training and experience in mental health program administration or who has had satisfactory experience in the direction of work of a comparable nature. The appointment shall be for an indeterminate term and until a successor is appointed and qualified or during the pleasure of the commissioner. It shall be the duty of the Director of Mental

Health to carry out the purposes of the bureau.

Sec. 42. 34 MRSA §2062 as repealed and replaced by P.L. 1975, c. 755, §10 is amended to read:

§2062. Director; duties

The commissioner shall, with the advice of the Committee on the Problems of the Mentally Retarded, appoint and set the salary ~~7--subject-to-the-approval-of-the-Governor-and-Council,~~ for a Director of Mental Retardation who shall be a person with training and experience in mental retardation program administration or who has had satisfactory experience in the direction of work of a comparable nature. The appointment shall be for an indeterminate term and until a successor is appointed and qualified or during the pleasure of the commissioner. It shall be the duty of the Director of Mental Retardation to carry out the purposes of the bureau.

Sec. 43. 34 MRSA §2102 as last amended by P.L. 1973, c. 326, §1 is amended to read:

§2102. Superintendents; appointment of; power and duties

The head of each hospital shall be called the superintendent. The commissioner shall, with the advice ~~and-consent~~ of the Advisory Committee on Mental Health, appoint, and set salaries for, the superintendent of each hospital. The appointments shall be ~~for-a-term-of-2-years-initially-and-then-an-indeterminate-term and-until-his-successor-is-appointed-and-qualified,-or-during~~ at the pleasure of the commissioner ~~and-the-Advisory-Committee on-Mental-Health~~. The superintendent shall be a qualified psychiatrist, a qualified hospital administrator, a qualified psychologist, or a person with a master's degree in social work,

public administration or public health. In making the appointment, the commissioner and advisory committee shall give due consideration to the appointee's qualifications and experience in administration, and to his qualifications and experience in health matters. The superintendent shall have general superintendence of the hospital and grounds under the direction of the department, and shall receive all patients in need of special care and treatment, legally sent to the hospital, that the accommodations permit, subject to the regulations of the department.

Sec. 44. 34 MRSA §2151, 2nd-¶ as last amended by P.L. 1973, c. 326, §2 is further amended to read:

The head of the Pineland Center shall be called the superintendent. The commissioner shall, with the advice and consent of the Maine Committee on Problems of the Mentally Retarded, appoint, and set the salary for the Superintendent of the Pineland Center. The appointment shall be ~~for-an-indefinite-term and-until-his-successor-is-appointed-and-qualified-or-during~~ at the pleasure of the commissioner ~~and-the-Maine-Committee-on Problems-of-the-Mentally-Retarded~~. The superintendent shall be a qualified psychiatrist, a qualified pediatrician, a qualified hospital administrator, a qualified psychologist, or a person with a master's degree in education, social work, public administration or public health. In making the appointment, the commissioner and the Maine Committee on Problems of the Mentally Retarded shall give due consideration to the appointee's qualifications and experience in health matters. The superintendent shall be responsible for the training, education, treatment and care of all persons received into the Pineland Center. He shall

be responsible for the release of all such persons, except those placed in the Pineland Center under Title 15, sections 101 or 103. He shall have direct supervision, management and control of the grounds, buildings and property and officers and employees of the Pineland Center, subject to the approval of the department.

Sec. 45. 37-A MRSA §1, sub-§§'s 3 and 4 as enacted by, 1975, c. 771, §403-A are amended to read:

3. Bureau of Civil Emergency Preparedness. The Bureau of Civil Emergency Preparedness shall have a director, who shall be appointed by the Adjutant General, ~~with the advice and consent of the Governor.~~ The director shall serve at the pleasure of the Adjutant General and shall not hold any other state office for compensation.

4. Bureau of Veterans Services. The Bureau of Veterans Services shall have a director, who shall be appointed by the Adjutant General, ~~with the advice and consent of the Governor.~~ The director shall be a war veteran and a person qualified by experience, training and a demonstrated interest in veterans services. The director shall serve at the pleasure of the Adjutant General and shall not hold any other state office for compensation.

Sec. 46. 38 MRSA §342, sub §2 as enacted by P.L. 1971, c. 618, §8 is amended to read:

2. He may employ, ~~subject to the Personnel Law,~~ such personnel and prescribe the duties of such employees, including bureau directors, as he deems necessary, to fulfill the duties of the department and of the Board of Environmental Protection.

Such personnel shall be subject to the Personnel Law, except for the bureau of directors.

Sec. 47. Transmittal provisions.

Any person who, on December 31, 1977, is an incumbent in a position not subject to the Personnel Law, which position is made subject to the Personnel Law by this Act, shall by this Act (a) be considered appointed under the Personnel Law to such position on January 1, 1978 without having to satisfy any other requirements; and (b) have the right to transfer under such appointment, all accrued fringe benefits (including vacation and sick leave, health and life insurance, and retirement) exactly as if such transfer were between 2 positions under the Personnel Law.

STATEMENT OF FACT

The purpose of this bill is to establish and apply a policy on classification under the Personnel Law for major policy-influencing positions below the level of department head in Maine State government departments and agencies. The bill is the result of a study by the Committee on State Government of the 107th Legislature, pursuant to H.P. 1776. Copies of the study may be obtained in the committee's office.

Section 8 of the Bill sets out the policy for such positions, as follows:

1. Determining whether such positions should be unclassified is an appropriate Legislative function;
2. Because they are able to influence State policy, there is a presumption that these positions should be unclassified, but each position should be evaluated separately according to reasonable criteria, examples of which are listed in the Bill;
3. To the extent possible, appointment and removal of persons in these positions should be at the pleasure of the department head, with currently classified incumbents and incumbents serving terms "grandfathered" in the position for 4 years; persons in classified positions who are promoted to unclassified policy positions are given rights to return to the classified position for 6 months; and
4. Incumbents of such positions are entitled to the same

fringe benefits as persons in positions with comparable pay ranges in the classified service.

Recommendations on whether to unclassify are made for all such positions.

The remaining sections of the Bill conform the current statutes to the recommendations of Section 8.