

By Mr. Woodward of Walpole, petition of Francis H. Woodward for review of the staffing of state agencies to eliminate unnecessary positions and requiring justification of positions in future state budgets. Public Service.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Seven.

AN ACT PROVIDING FOR A REVIEW OF THE STAFFING OF STATE AGENCIES TO ELIMINATE UNNECESSARY POSITIONS AND REQUIRING JUSTIFICATION OF POSITIONS IN FUTURE STATE BUDGETS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. It is hereby declared to be the policy of the
2 commonwealth to maintain a level of state employment not
3 exceeding the proven needs of the several offices and agencies of
4 the commonwealth and, to that end, to require each office and
5 agency to justify the number of positions to be provided for in
6 each annual budget, to permit reasonable transfers of positions
7 among the several offices and agencies according to their
8 respective needs, to provide financial assistance and opportunities
9 for retraining and re-employment for any persons whose
10 positions are found to be in excess of proved needs, and to set an
11 initial level of necessary employment to be reached under rules
12 and regulations of the commissioner of administration through
13 the offices of the several secretaries.

1 SECTION 2. Section 3 of chapter 29, as most recently
2 amended by section 2 of chapter 844 of the acts of 1974, is hereby
3 further amended by adding at the end of the first paragraph the
4 following new sentence: — Such statement of justification shall
5 be completed with the assistance of a personnel administrator in
6 accordance with procedures prescribed by rule and regulation of
7 the commissioner of administration.

1 SECTION 3. Section 45 of chapter 30 of the General Laws, as
2 most recently amended by section 37 of chapter 835 of the acts of
3 1974, is hereby further amended by inserting after paragraph (l)
4 the following new paragraph: — (la) The administrator shall, at
5 reasonable intervals, review every such appointive office and
6 position in the government of the commonwealth to determine
7 that it is justified by the work requirements of the office or agency
8 in which it is placed and, further, to determine whether the duties
9 actually being performed by the incumbent of such position
10 reasonably conform with those described in the specifications for
11 the class established under paragraph (l). He shall report from
12 time to time to the commissioner of administration any positions
13 which he finds are not longer justified and said commissioner
14 shall take any appropriate action relative to their abolition.

1 SECTION 4. Chapter 31 of the General Laws is hereby
2 amended by striking out section 46G, as most recently amended
3 by chapter 96 of the acts of 1967, and inserting in place thereof
4 the following section: —

5 *Section 46G.* If the separation from service of persons in the
6 official or labor service results from lack of work or lack of
7 money or from abolition of positions, they shall be separated
8 from service by class and grade *within their department*, except as
9 hereinafter provided, and be reinstated therein in the same
10 department and in the same position or in a similar position as
11 that formerly held by them, according to their seniority in the
12 service, so that the senior officers or employees in length of
13 service shall be retained the longest and reinstated first and before
14 any certification of new names; provided, however, that such
15 reinstatement is made within a period not exceeding five years
16 after the date of such separation. Before any action is taken to
17 effect such a separation from service of any officer or employees,
18 seven days' written notice thereof shall be given to him by the
19 appointing authority.

20 If before action is taken to effect such a separation and within
21 said seven days an officer or employee files his written consent
22 with the appointing officer, he shall be demoted *within his*
23 *department* to the next lower grade or grades in succession in the

24 official service or to the next lower class or classes in succession in
25 the labor service, if in such lower grades or classes there is a
26 *position which is vacant, or if there is no such vacant position, if*
27 *there is a position to which an officer or employee holds*
28 *provisional appointment, or, if there is no such position, if there*
29 *is a position held by an officer or employee junior to him in length*
30 *of service. As soon as sufficient work and money is available*
31 *officers or employees so demoted shall be restored to the grade or*
32 *class formerly held by them, according to their seniority.*

1 SECTION 5. Chapter 31 is hereby further amended by
2 striking out section 461, as most recently amended by section 130
3 of chapter 835 of the acts of 1974, and inserting in place thereof
4 the following new section:—

5 *Section 461. Whenever a person is separated from the official*
6 *or labor service for layoff due to lack of work or lack of money or*
7 *for abolition of position, or as a result of the demotion of another*
8 *employee pursuant to section forty-six G, his name shall be*
9 *placed by the administrator on the re-employment list, and if a*
10 *person is separated from such service because of resignation on*
11 *account of illness his name shall be placed thereon upon his*
12 *request in writing made within two years of the date of such*
13 *separation. The name of any such person so placed on the*
14 *reemployment list shall remain thereon until he is appointed to a*
15 *position after certification from such list or reinstated to a civil*
16 *service position, but in no event for longer than two years. This*
17 *section shall not apply to persons originally employed on*
18 *requisition for temporary service or to provisional employees.*
19 *Thereafter on requisition to fill any position [which in the*
20 *judgment of the director, can be filled from such re-employment*
21 *list] the administrator, before certifying from the regular list, shall*
22 *certify from such re-employment list, in accordance with the rules*
23 *relative to certification, the names of persons qualified for the*
24 *position then standing thereon in the order of the date of their*
25 *original appointment. Persons so re-appointed from the list shall*
26 *not be required to serve a probationary period and shall retain all*
27 *seniority, retirement and other rights.*

28 If the functions of an office or position occupied by a person
29 holding permanent civil service status are transferred to another
30 department, division, board or commission, the incumbent of the
31 office or position shall at his own request, if lieu of being placed
32 on a re-employment list, be transferred, upon the approval of the
33 director, to such department, division, board or commission, to a
34 similar office or position without loss of seniority, retirement or
35 other rights.

36 *For a period of two years after an officer or employee is*
37 *separated from an office or position to which he holds permanent*
38 *appointment by law-off because of lack of work or lack of money,*
39 *by abolition of position or by demotion of another office or*
40 *employee under section forty-six G, he shall not, on account of*
41 *such separation, be denied eligibility for any examination for, or*
42 *promotion or transfer to any office or position for which he was*
43 *eligible immediately prior to such separation.*

1 SECTION 6. The secretary of each executive office establish-
2 ed under the provisions of chapter 6A of the General Laws shall
3 cause a survey to be made of every permanent, temporary and
4 part-time position in each agency within his jurisdiction, in
5 accordance with procedures established by the commissioner of
6 administration, to determine the necessity of such positions in
7 relation to the work to be done by the several agencies. The
8 results of such surveys shall be reported to the commissioner of
9 administration and to the director of personnel and standardiza-
10 tion to assist him in the classification or re-classification of such
11 positions. Based on such reports, the commissioner of ad-
12 ministration shall, from time to time, determine what permanent
13 positions are no longer required by the work of the several
14 agencies and shall authorize the joint committee on ways and
15 means to eliminate such positions from its current schedule of
16 positions; provided, that the total number of such positions so
17 terminated as of December 31, 1976, shall be not less than ten per
18 cent of the total number of permanent positions on said schedules
19 as of July 1, 1975, and provided, further, that said commissioner
20 shall thereafter continue to make such reductions in permanent
21 positions as subsequent surveys indicate may be made without
22 impairment of essential state services.

1 SECTION 7. Any other provision of law to the contrary
2 notwithstanding, any permanent employee in a position ter-
3 minated under the provisions of section 3 may be transferred to a
4 position in the service of the commonwealth of equal or lower
5 grade, as established by the bureau of personnel, whether or not
6 the title is similar, on request of the appointing authority of the
7 department to which the employee is to be transferred and with
8 the consent of the employee. Such transfer shall be without loss of
9 seniority, retirement or other rights.

1 SECTION 8. For the purposes of this and the following two
2 sections, the following terms shall, unless the context clearly
3 requires otherwise, have the following meanings: — “Permanent
4 civil service employee”, an officer or employee holding appoint-
5 ment after certification to an office or position, whether
6 permanent or temporary, in the official or labor service of the
7 commonwealth, as defined in section one of chapter thirty-one of
8 the General Laws.

9 “Special tenured employees”, an officer or employee who holds
10 tenure, by reason of section nine A, section nine B or section nine
11 D of chapter thirty of the General Laws, in an office or position
12 not in the classified civil service of the commonwealth.

13 “Three-year employee”, any other officer or employee, other
14 than an officer or employee appointed to an office or position for
15 a fixed term or at the pleasure of the governor or of the governor
16 and council, who holds appointment to a year-round permanent
17 or temporary office or position in which he has served
18 continuously for a period of not less than three years.

1 SECTION 9. Notwithstanding any provision of general or
2 special law to the contrary, any permanent civil service employee,
3 special tenured employee or three-year employee who is separated
4 from his office or position as a result of abolition of such office or
5 position by amendment at any time before the end of the fiscal
6 year ending on June 30, 1977, of schedules of permanent or
7 temporary positions by the joint committee on ways and means
8 under authority of the act making general appropriations for said

9 fiscal year, or of paragraph (5) of section forty-five of chapter
10 thirty of the General Laws, or who is separated from his office or
11 position as a direct result of the demotion of any such permanent
12 civil service employee under section forty-six G of chapter thirty-
13 one, shall be entitled to the following rights and benefits:

14 (a) His name shall be placed on a re-employment list
15 established by the personnel administrator in the manner
16 provided in section forty-six I of chapter thirty-one of the General
17 Laws and he may be appointed therefrom, in such manner, to an
18 office or position for which he is qualified in the opinion of said
19 administrator. The names of such employees shall be placed on
20 such re-employment list in the following order:

21 (1) permanent civil service employees, in the order of the dates
22 of their original appointment;

23 (2) special tenured employees, in the order of the dates of their
24 original appointments;

25 (3) three-year employees, in the order of the dates of their
26 original appointment.

27 Persons in each of the foregoing clauses (1) and (2) shall have
28 absolute preference over persons in the succeeding clause or
29 clauses in appointment to offices or positions for which they are
30 qualified, and persons on such reemployment list shall have
31 absolute preference over all other persons in appointment to such
32 offices or positions.

33 Any permanent civil service employee who is appointed to an
34 office or position from such re-employment list shall be deemed
35 to be permanently appointed to such office or position without
36 taking a qualifying examination or serving a probationary period.
37 Any special tenured employee who is appointed to an office or
38 position from such re-employment list shall be subject to a
39 qualifying examination prescribed by the administrator and, if he
40 passes, shall be deemed to be permanently appointed without
41 serving a probationary period. Any three-year employee who is
42 appointed to an office or position from such re-employment list
43 shall be subject to a qualifying examination prescribed by the
44 administrator and, if he passes, shall be deemed to be
45 permanently appointed to such office or position after serving a
46 probationary period.

47 Any person appointed from such re-employment list shall
48 retain all seniority, retirement, tenure and other rights held
49 immediately prior to the effective date of such separation from
50 service, but nothing herein shall be construed to confer on such
51 person any rights not held on such date.

52 (b) Commencing on the date of such separation from service,
53 he shall continue to receive his weekly salary at the rate in effect
54 immediately prior to such date for a period of eight weeks and to
55 be eligible to participate in the contributory group insurance
56 program as established by chapter thirty-two A of the General
57 Laws for a period of twelve weeks; provided, however, that this
58 paragraph shall not apply to an employee who is eligible to
59 receive unemployment compensation benefits; and provided,
60 further, that the benefits provided by this paragraph shall
61 terminate on the date on which an employee is re-employed or is
62 offered appointment from the re-employment list to an office or
63 position in the same or next one or two lower grades in the salary
64 schedule or is offered employment to any other position in public
65 or private service determined by the secretary of manpower
66 affairs to be similar in location and duties at a salary not less than
67 ninety percent of his salary immediately prior to such separation.

68 (c) He shall receive preference, in the order prescribed by
69 clauses (1), (2) and (3) of paragraph (a) of this section, in
70 enrollment in any job training program conducted by the
71 commonwealth under section twenty-eight A of chapter seven of
72 the General Laws or otherwise, for a period of one year from such
73 date of separation.

1 SECTION 10. Notwithstanding any provision of general or
2 special law to the contrary, the personnel administrator may
3 include among the positions to which appointment may be
4 certified from the re-employment list established under the
5 preceding section any position for maintenance employees in any
6 institution under the department of education or any position in
7 any institution under the departments of mental health, public
8 health, public welfare, correction or youth services or in the
9 soldiers' homes of Massachusetts, or their successor agencies,

10 except positions to be filled by an employee rendering
11 professional service.

1 SECTION 11. The provisions of this act shall take effect on
2 July first, nineteen hundred and seventy-five.

1 EXPLANATION

2 *Italics* indicate new material added to existing law.

3 [Brackets] indicate material stricken from existing law.