

**Testimony of Kirsten LC Figueroa, Commissioner**  
**Department of Administrative and Financial Services**  
**Before the Joint Standing Committee on State & Local Government**  
**LD 2121 An Act to Address Chronic Understaffing of**  
**State Government Positions**  
**February 8, 2024**

Good afternoon, Senator Nangle, Representative Stover, and members of the Joint Standing Committee on State and Local Government. I am Kirsten Figueroa, the Commissioner of the Department of Administrative and Financial Services (DAFS). I am here today to testify on LD 2121 An Act to Address Chronic Understaffing of State Government Positions.

Thank you for the opportunity to be here today.

You have before you a bill about the State of Maine's vacancy rate and chronic understaffing. But it is also essential that you do not discount the current nationwide workforce shortage. Most organizations are reporting higher than normal vacancy rates right now. And as an employer, the State is competing in the same extraordinarily tight labor market as every other employer in Maine, New England, and nationwide.

Maine's December 2023 statewide unemployment rate was 3.2%, which was the 25<sup>th</sup> consecutive month that Maine's unemployment rate was below 4%, making this the second longest period on record that Maine's unemployment rate has been below 4%. Just to drive this point home further, per the State Economist, in September 2023 there were .4 unemployed job seekers for every job opening—or in other words more than two job postings for every unemployed applicant.

The State of Maine's hiring difficulties are not unique in nature, but they are pronounced given the State is Maine's second largest employer, the wide range of jobs the State employs, and the essential services the State provides. Many of the positions the State is having the greatest difficulty filling are within the same fields experiencing well-documented workforce shortages in the private sector, such as social workers, mental health providers, nurses, accountants, and IT. It is also worth acknowledging the objective difficulty that is inherent in many State jobs. They exist to interface with people in some of the worst moments of their lives, when they are at their most vulnerable, when they are in crisis, and when their options are limited.

These jobs require employees to constantly navigate difficult situations, shoulder mental and emotional stress, assume responsibility when stakes are high, and at times withstand a level of public scrutiny directed at their profession, agency, and colleagues that many would consider overwhelming. We are fortunate to have thousands of employees who have the desire to serve their state and these populations in these situations. And they do it with grace, and often encourage people they know to join them. But it is understandable, in a nationwide situation of 2+ job openings for every job seeker, why there could be a delay in filling these vacancies.

Overall, DAFS is amenable to some of the bill's proposals, but finds some of the solutions offered to be counterproductive. The State's vacancy rate is not entirely attributable to wages and salary and will not be reduced by pay increases alone, as Sections 2 and 6 of the bill seem to suggest. To address the State's vacancy situation, we need to understand all of its contributing causes and pursue best practices to address them. And know when a problem isn't actually a problem.

As of Monday, February 5<sup>th</sup>, the State's top-line vacancy rate was 17.8%—there were 2,450 positions labeled as “vacant” out of a total of 13,738 positions. But the underlying facts of that vacancy rate are more complicated than a simple percentage can convey; there are a myriad of reasons that State positions are vacant and, in some instances, are intentionally held vacant.

Common, easily understandable reasons that a position is vacant include:

- a seasonal position that is vacant in February but will be filled for the summer months;
- an intermittent position that is filled on an as-needed basis with no current need;
- a vacated temporary or project position with an upcoming end date, so will not be filled;
- a position we are currently in the midst of hiring;
- a position temporarily being filled by another employee in an acting capacity;  
or
- a position that was recently created in the budget and has not yet been posted.

When the 2,450 currently vacant position listing is reduced by those 592 positions that are seasonal, intermittent, project or temporary limited period, a more accurate representation of the State's vacancies is 1,858 positions: an adjusted vacancy rate of 13.5%.

But there are also more complicated reasons, unique to the way State Government operates that a position might be held vacant, and for these reasons the State of Maine runs a 9-10% vacancy rate even in the most employer favorable job markets. For example:

- the previous incumbent had a vacation payout that has to be covered before the position can be filled;
- the position no longer has sufficient federal, other special revenue, or fees-based funding;
- positions are being reclassified and are awaiting budget funding;
- positions are being held vacant to administratively fund reclasses;
- positions are being held vacant to manage self-funded Personal Services components, such as: unanticipated overtime, callout or standby costs, recruitment/retention stipends, and, hiring above budgeted step;
- positions are being held vacant to cover the budgeted attrition rate; and
- multiple vacancies allow departments and agencies the rare flexibility to consider whether their organizations could be better served by restructuring their staff.

State government budgeting actually assumes a level of vacancy. Each biennial budget includes savings from attrition—the assumption that a certain amount of Personal Services will not be spent due to vacancies. Maine law has this set at 1.6%. For the last several years, the Administration has proposed 5%. In the 2024/2025 Biennial Budget, the Legislature increased the 5% to 8% and 6%, in each year respectively, in recognition of the impact to state government of the nationwide workforce shortage.

Eliminating vacant positions to fund or create new positions or adjust existing positions routinely happens in our agencies as each position is evaluated when it becomes vacant. But having vacant positions does not diminish or eliminate the need to add new positions. However, vacant positions, of course, add to the workload of those present.

State Government is not permitted to function with the organizational dexterity of private sector businesses. Our human resources and management operate in an environment that is governed by the civil service laws and rules and bargaining unit agreements that often impose rigid, time-intensive processes to ensure fairness. Our staffing levels require legislative approval, which is heavily dependent upon the availability of State revenues and must compete against every other policy priority

for budget funding. Ultimately, this means we can't hire quickly and we can't fire quickly, which is in stark contrast to the private sector.

At this time, the State is recruiting for 265 open positions. In 2023, the State posted 3,696 job openings and received approximately 44,000 applications, which speaks to the fact that the State's recruitment work is never done - as Maine's second largest employer we are in a continual state of hiring.

Getting to the specifics of the bill, DAFS and more specifically, the Bureau of Human Resources (BHR) would be happy to provide the Legislature an annual report detailing Executive Branch vacancies. That is a report that has routinely been requested by the AFA Committee within the context of reviewing staffing requests included in the biennial and supplemental budgets, and provided by this Administration to aid that conversation. However, it is important to recognize that this report will always provide just a snapshot of a particular moment in time. It will never capture all of the movement across State positions that occurs over the course of a year, so if the Committee wants to implement a reporting requirement, we would like to help you determine metrics that will offer insight into the State's vacancies, recruitment and retention. One way that DAFS/BHR is already plumbing the issue of vacancies, recruitment and retention is by conducting an annual Workforce Engagement Survey. The first such survey was conducted from October 27 – November 7, 2022. A follow-up survey was recently in the field from January 11 – January 26, 2024. I will reference our findings from the 2022 baseline survey throughout my testimony. Unfortunately, findings from the follow-up survey aren't likely to be available to inform this discussion.

Sections 2 and 3 of the bill propose changes to portions of 5 MRSA §7065, sub-§ 2-D, recruitment and retention adjustments under the compensation plan. One of the statutory goals and objectives of the Bureau of Human Resources is to preserve the integrity of the civil service system, including the compensation plan. This section of civil service law permits the State Human Resources Officer to approve payment of a recruitment and retention adjustment should one be required to recruit and retain an adequate work force. It is important that such approval be granted only with documentation of a demonstrated need in order to maintain the integrity of the compensation plan and avoid creating wage disparity across state government.

Prior Legislatures considered the importance of maintaining compensation plan integrity by requiring in law that payment of a recruitment and retention adjustment only be authorized when justified by four factors: 1) high turnover or long-term vacancies within a classification or job series; 2) there is a clear, geographically

definable labor market within which the State must compete; 3) all appropriate recruitment and retention efforts have been attempted and have proven ineffective at current levels of compensation; and 4) documentation demonstrates a labor market disparity exists that represents a long-term, not transitory or seasonal, problem. To divide these four current criteria, requiring just one of the four be met to authorize an adjustment, as this bill proposes to do, would significantly dilute the criteria, creating wage disparity and negatively impacting the integrity of the compensation plan. Imagine if all one had to do to justify a pay adjustment was identify a clear, geographically definable labor market within which the State must compete—with no requirement to demonstrate a recruitment or retention problem.

To assist the State Human Resources Officer in making a recruitment and retention adjustment determination under the current law, a committee must be established with representation from BHR, the employing agency, and the bargaining agent, if applicable. The role of the committee is to evaluate the request against the statutory criteria, conduct any studies necessary, and provide the State Human Resources Officer with a report to include supporting documentation and recommendations. Committee members take their role seriously and conduct detailed studies with familiarity of the recruitment and retention issues and knowledge of where and how to best gather comparable compensation data related to the classification(s) included in the request.

This bill's inclusion of a neutral third party as agreed to or as assigned by the Maine Labor Relations Board is unnecessary for an already effective process, sets the parties up for disagreement in what is currently intended to be a fact-based process, generates an additional cost for a process that currently has effective outcomes at no cost to the State, and creates potential to delay the implementation of recommended adjustments. There are no known instances of committee recommendations providing documentation demonstrating the need for a recruitment and retention adjustment being denied. The statute anticipates and provides the process to fund authorized adjustments through an operating budget submission to the Legislature. Because the budget process can delay payment of an otherwise authorized adjustment, to implement approved recommendations more expeditiously, the State has entered into agreements with bargaining agents to temporarily fund authorized adjustments using salary savings, when such savings exist, until the budget submission is approved.

The only component of the current recruitment and retention adjustment statute that does not work well, but is not addressed by this bill, is the requirement to review the

labor market adjustments every two years and adjust for changes in the labor market, including decreasing or discontinuing an adjustment, with no reduction in pay to any employee. In its Report and Recommendations of the Maine State Government Classification and Compensation Plans Study, the State recommends revising the review of market pay adjustments from every two years to every four years, aligning the review with the statutory requirement under P.L. 2023, ch. 412, § UUU-1 for BHR to conduct market pay studies every four years. The report further recommends that the statutory language for adjustments be improved to provide for the same amount of adjustment to all employees in the classification for which an adjustment change is warranted and authorized, whether the adjustment is increased, decreased, or discontinued.

The State has implemented various programs and policies to both attract new employees, as well as retain its current workforce. These include targeted recruitment efforts, leadership development programs, and employee recognition and retention initiatives. The Workforce Engagement Survey helps inform where our efforts should be directed.

We know from the 2022 State of Maine Workforce Engagement Survey that State employees' motivations for coming to work for the State, continuing to work for the State, leaving State employment, and returning to State employment are more multi-faceted than just pay. In fact, the Top 5 reasons that employees came to work for Maine State Government were:

1. the Benefits (90% indicated the benefits were the #1 reason they came to work in State Government);
2. job security;
3. the opportunity to make a difference for the people of Maine;
4. the work seemed interesting; and
5. public services is important to them.

71% of the State employees are generally satisfied with their jobs, 87% see their work as adding value for the people of Maine, 87% feel their supervisor treats them with dignity and respect, and 59% would recommend their agency as a great place to work.

These are the types of facts that the State needs to hold up in order to recruit job seekers into State service, and to be widely recognized as an Employer of Choice throughout Maine. According to Forbes, 86% of prospective employees look at company reviews and ratings before applying to a job, and 50% of prospective

employees won't apply to a company with a bad reputation. How we talk about State Government careers matters and has a real impact on our ability to recruit and retain employees. Shifting our culture and becoming recognized throughout the state as an Employer of Choice are steps we can take to address recruitment and retention challenges. Completely counter to that objective, the union that represents the majority of our State employees has seized on every possible opportunity—including this moment right now—to disparage the State of Maine as an employer before the Legislature and in the media, and in turn, to the State's applicant pool. The outdated "pay gap" refrain is drowning out the fact that the State of Maine:

- increased pay by not less than 24.1% across the board, 29% for more than half of employees, and by even more for some;
- offers a platinum rated health insurance plan with low employee monthly premiums, a low deductible, a low out-of-pocket max, high-benefit levels, and affordable dependent coverage, as well as dental and vision insurance;
- provides 13 paid holidays, 12 paid sick days, and a minimum of 15 paid vacation days per year; and
- provides 6 weeks of paid parental leave upon the birth or adoption of a child, and a childcare reimbursement of up to \$2,000 for those with an adjusted gross family income of less than \$60,000 (for each parent if they both work for the State).

The State of Maine's benefits are infrequently rivaled by the private sector. Furthermore, we acknowledge our employees are whole persons, with lives, families, commitments, and interest outside of work. We provide our employees with work-life balance, predictable schedules, security, and flexibility. In March of 2020, when unemployment skyrocketed overnight, not a single State employee was laid-off; when it was less safe to work in office settings, the majority of office employees were transitioned to remote work; for many of those who had to continue reporting to work in positions requiring interaction with the public, hazard pay was provided; to ensure employees were not going off payroll or using up their earned sick leave, we provided 80 hours of paid Covid Care leave and frontloaded sick leave for employees to take care of themselves and their loved ones in the event of illness, and allowed sick leave to be used to care for children when their school or childcare was closed due to COVID; to avoid the loss of earned vacation over the maximums during a time of restricted travel and gathering, we allowed unused vacation leave above the maximums to roll over for two years; and the list goes on.

BHR's Talent Management Division continues to forge partnerships with any organization that might be helpful recruiting job seekers into State employment—colleges, middle and high schools, recruitment vendors, veteran organizations, the Age-Friendly Institute, Cultural Alliance of Maine, Diversity Hiring Coalition, Maine Development Foundation, the Workforce Cabinet, Margaret Chase Smith Policy Center, Live & Work in Maine, and more. These partnerships are vital, and we rely on their positivity and encouragement. As such, DAFS objects to the notion in Section 4 that our recruitment and retention partners be statutorily defined. If the engagement is positive and encouraging, is fact based and unbiased, we welcome the collaboration.

BHR is proud of the progress being made by the Talent Management Division and HR professionals across state government to improve the hiring process. Though comprised of only six staff with just two dedicated to recruitment, the Talent Management Division expends a significant amount of effort to ensure successful recruitment for and then retention of State employees. The Talent Management Division's improvement efforts include:

- increasing the use of social media to advertise positions;
- connecting with other recruitment vendors such as Indeed and Handshake which shares our State jobs with college students and alums across the country;
- increasing our presence at career fairs and community events;
- updating job classifications and job postings so more people feel comfortable that they have the skills and background we are looking for;
- expanding public sector apprenticeship, internship and job shadow opportunities; and
- streamlining the application process to take as little as five minutes—and it can be completed from one's mobile device.

The Talent Management Division collaborates with HR in the service centers and agency hiring managers on job postings, a critical piece of recruitment and attracting qualified applicants to state jobs. In the past, it has been common to use the classification specification for the job posting, however this was never meant to serve as an engaging job posting. HR and hiring managers are educated to write a posting with a call to action - why would applicants want to come and work in this job, for your agency? What's rewarding about the work, and what sets it apart? What will people actually be doing on a daily basis? Hiring managers are encouraged to put themselves in the applicants' shoes at all points of the recruitment process.



What would make a job stand out to them and cause them to apply? Adding information on telework or possible career development opportunities as part of the posting can make a big difference to applicants. In short, we're moving towards a recruitment model that is candidate centered from the beginning, and that takes the candidate's perspective and experience into consideration at all steps of the process.

There are approximately 7 FTEs within the HR department and service center offices plus 2 FTEs within the Talent Management Division for a total of 9 FTEs who processed the 3,696 position postings and 44,000 applications in 2023—over 410 postings and 4,888 applications per HR FTE. And this work is just a part of their work, not their only work. We have increased our staffing levels some, but we will be looking to add additional positions to HR in future budgets to ensure a more manageable workload.

Just as important as recruitment, if not more, is retention. Long-tenure State employees become subject matter experts, hold institutional knowledge, and develop efficiencies that makes their departure compounded losses rather than mere vacancies to fill. People move on from jobs for varied, personal, and valid reasons. Sometimes their departure is planned in the case of retirement or unavoidable, but sometimes it was easily preventable had the reason they started job hunting simply been addressed.

In November 2023, BHR hosted approximately 100 managers, directors, and leaders from agencies across State Government for the Employer of Choice Summit with engaging and interactive sessions on the 10 pillars associated with becoming an Employer of Choice, including: talent attraction and the candidate experience; diversity, equity, and inclusion; workplace culture; “Everboarding” (enhanced onboarding); and more.

The focus on workplace culture includes training our leaders and managers on how to recognize, engage, support, and retain their workforce. Recruitment strategies cannot succeed without a focus on retention, and as a result the mandatory Managing in State Government program has been updated to include information on diversity, equity, and inclusion in leadership; employee recognition and engagement; and the hiring manager's role in recruitment.

The State is also deeply invested in reviewing the findings of our Workforce Engagement Surveys to identify concerns and develop strategies for addressing them and taking action to generate improvements and solutions. Recurrent iterations of the survey will allow State Government as a whole, as well as, each agency

individually to identify trends over time, both positive and negative, and institute improvement measures.

Only 22.1% respondents to the 2022 survey indicated that they'd been actively looking for a new job outside of Maine State Government. Conversely, half (48%) of the current workforce plans to remain an employee of the state for five years or more. However, employees identified areas for improving the work experience, including increasing staffing, improving work-life balance, encouraging innovation, and providing more guidance for career development. The State of Maine has implemented policies and programs to promote work-life balance and employee well-being including flexible schedules, teleworking options, and wellness programs. Additionally, staff identified wanting more involvement and feedback from their supervisors, improved communication from leadership, as well as improved technology and opportunities to attend trainings. From this feedback, leadership development programs, employee recognition, and retention initiatives have been implemented.

These are the types of insights our surveys provide, affording opportunities for the State as an employer to learn what is important, what is working, and where we may be able to implement measures to improve the work experience for—and thus retain—our valued employees.

As I've enumerated, BHR is already deep at work and well ahead of Section 5 of the bill on a plan to recruit and retain State Government's current and future workforce. But one aspect of the hiring process deserves particular attention: the typical length of time from posting a job until a new hire's first day.

The State has a required 10-business day posting period for most of our jobs, and many applicants are guaranteed interviews based on certain status. You'd be hard pressed to get through the current process in less than 6-8 weeks. As result, especially in an environment of more jobs than people, we may lose out on the best candidates to other employers because they can't or won't wait this long for us.

Efficiencies can be created within the process. HR encourages hiring managers to be proactive to reduce the amount of time it takes candidates to hear back on an interview and next steps. For example, in *Managing in State Government*, participants are encouraged to prepare their hiring panels ahead of time, schedule interview dates shortly after the job posting closes, and contact interview candidates as soon as HR sends the list of qualified applicants. Prioritizing recruitments and responding to applicants in a timely manner creates a positive candidate experience.

Finally, Section 6 of the bill proposes a \$165 million transfer from the FY24 unappropriated surplus to a newly established fund. It is unclear what this \$165 million would be used for as these would be one-time funds. Costs for state government employee wages and benefits are ongoing and should be funded as such.

The impact of the 24.1% cumulative wage increases that have been negotiated during this Administration, as authorized by the Legislature, is approximately \$511 million a biennium, ongoing, across all funds. This does not include the one-time payouts, annual merits, or the myriad of allowances and special, stipend, and shift differential pays.

DAFS is the department responsible for both Human Resources and Budget; we have the unenviable duty to hold staffing and compensation in tension with available resources and responsible State fiscal management. As the Governor and Legislature consider each wage increase and benefit increase, there are a number of factors that must be balanced. Impacts to the General Fund, yes. But also, the impact to other funds. The General Fund supports approximately 44% of the total cost of Personal Services. Increased costs put at risk positions funded with stagnant or diminishing funding, through reduced grant funding, rates that can't be adjusted, or fees that cannot be increased. It is also about balancing resources between funding existing positions and creating new positions. And, as previously discussed, the balance needed to ensure the continued sustainability of these increases to all funding sources. The inability to sustain these increases would likely result in position eliminations and layoffs.

Also, it is DAFS' assessment, based upon the continual attention that we pay to State revenues and the constant sense of the State's financial situation that we maintain, large unappropriated surpluses at the end of the fiscal year are not the norm, and projected FY 26/27 State revenues are insufficient to absorb the additional \$330 million of this unaccounted for salary expense into the baseline of the next and future biennium.

I thank you for the opportunity to highlight the larger picture of what we're doing and what we consider as we review the State's vacancy rates and work to improve our recruitment and retention efforts. As Maine's second largest employer we are in a position to lead, and we are dedicated to positive, ongoing efforts to support our valued existing employees as well as those we've yet to meet who will fill our vacancies.