

**Testimony of Tom Feeley, General Counsel
Maine Service Employees Association, SEIU Local 1989**

In Support of LD 1265, "An Act to Amend the Laws Governing Public Employee Market Pay Studies and Comprehensive Reviews of the Classification Plan for State Service Positions," and LD 1744, "An Act to Modify Provisions of the State Civil Service System Governing Employee Recruitment and Retention"

Senator Baldacci, Representative Salisbury and members of the Joint Standing Committee on State and Local Government, my name is Tom Feeley, General Counsel for the Maine Service Employees Association, SEIU Local 1989. MSEA represents approximately 13,000 workers at private and public employers across the state, including approximately 8,500 employees in four bargaining units at the Executive Branch. I am here to testify on behalf of LD 1265, "An Act to Amend the Laws Governing Public Employee Market Pay Studies and Comprehensive Reviews of the Classification Plan for State Service Positions," and LD 1744, "An Act to Modify Provisions of the State Civil Service System Governing Employee Recruitment and Retention."

Maine State government is plagued by longstanding recruitment and retention issues. As of November of last year, 1,370 of 9,450—or one in seven—full-time, non-seasonal, and non-temporary positions in MSEA's four bargaining units were vacant.

These vacancies have devastating effects on the public that relies on services. For example, over the last several years, understaffing has meant that the State is unable to fill vital positions to ensure that State ferries can run, that youths in state custody at Long Creek Youth Development Center are in a safe and secure environment, that phone calls to Maine DHHS eligibility specialists are answered without two-hour hold times, and that the thousands of children served by the Office of Child and Family Services receive the services they need.

In many instances, understaffing poses a significant risk to State employees. For example, 52 of 204—or 25%—MSEA-represented permanent and limited period full-time positions at Riverview are vacant. As a result, workers are forced into unsafe staffing situations with dangerous patients. This has all too frequently led to violent assaults on staff—often with life altering consequences, including severe traumatic brain injuries.

Directly related to the issue of vacancies, Executive Branch wages consistently lag, on average, between 15 and 20% behind the broader labor market. In recognition of this connection between wages and vacancies, the Legislature instituted several statutory mechanisms for identifying and addressing below-market wages in the Executive Branch. These include the statutory process for recruitment and retention adjustments under Title 5, §7065, and the requirement that the Bureau of Human Resources produce a market pay study every four years under Title 5, §7061.

LD 1744 and LD 1265 each aim to improve upon these statutory mechanisms. The common thread is to increase objectivity and accountability in the processes. I will address each of the bills in turn.

1. LD 1265, “An Act to Amend the Laws Governing Public Employee Market Pay Studies and Comprehensive Reviews of the Classification Plan for State Service Positions.”

It is no secret that the wages of Executive Branch employees lag far behind other public and private sector employers in the region. Study after study has demonstrated persistent wage gap, with average ranges between 15 and 20%.

Notably, the wage gap is not equally distributed among classifications. While some classifications are actually at or near the market average, others are as much as 40% below the market value. This means that a one-sized fits all, across the board percentage raise will not fix the problem. Rather, closing the wage gap will require targeted raises for those classifications that are further behind—which requires accurate salary data for classifications.

In 2023, the Legislature passed the law requiring the Bureau of Human Resources to conduct a market pay study every four years, with the first one being due September 30, 2024. The Legislature allocated \$1,000,000 for the completion of the market pay study and a separate classification study. Surely, the Legislature’s rationale for allocating these funds was to ensure that the market pay study would be professional and produce objective, reliable data.

Unfortunately, the Bureau of Human Resources did not concur. Rather than using the money set aside by the Legislature to hire an experienced, professional, third-party consultant, the Bureau opted instead to do the market pay study in-house. This is the equivalent of the fox guarding the henhouse. The Bureau sits across the table from labor at negotiations. It has zero incentive to produce good, accurate data.

Predictably, the Bureau’s in-house study was severely flawed. I want to briefly highlight several of the issues:

- The Bureau’s in-house team had virtually zero relevant experience, and the Bureau’s then-Director acknowledged to MSEA that they were learning on the job.
- The Bureau did not even begin the study in earnest until a few months before the statutory deadline.
- Because the Bureau dragged its feet in starting the study, it failed to obtain sufficient data from competitor employers. The Bureau’s stated methodology required that the classifications examined would have matching data from at least five competitor employers. However, none of the classifications included in the study had more than three direct matches, and most had one or two.
- In order to fill in these gaps, the Bureau auto-generated data from several published data sources. This is the equivalent of conducting a study using ChatGPT, and it resulted in extremely questionable findings. For example, the Bureau’s preliminary results included data for ferry workers at the City of Lewiston, including a purported salary range. While the Bureau pulled that particular data from the final report after MSEA pointed out that Lewiston does not, in fact, have a ferry service, the final report still includes imaginary salary data and imaginary positions at various employers.
- The Bureau’s study also overrepresented classifications that already had recruitment and retention stipends attached – meaning that these classifications had, at some point in the past, already been adjusted to the market. This necessarily skewed the overall

average closer to the market. It also meant that instead of capturing a diverse and representative sampling of classifications, the study overrepresented particular job series with stipends – such as the building trades and informational technology positions.

These problems are but the tip of the iceberg. I am attaching hereto MSEA's response to the Market Pay Study, which we submitted to the Committee last October. However, it is worth noting that even the Bureau's flawed study concluded that, on average, State workers are paid at least 14% below the market. We think that the actual number would be much higher.

We support this legislation because we believe it is vital that the Legislature and the next Governor have objective, reliable salary data. By allocating the money for a professional, third-party study, and requiring the Bureau to actually utilize it, the bill will ensure that the Legislature has the best available information to make funding decisions.

2. LD 1744, "An Act to Modify Provisions of the State Civil Service System Governing Employee Recruitment and Retention"

The statutory process for recruitment and retention adjustments under Title 5, §7065, is broken. As designed, and in practice, either the Executive Branch or the relevant union can initiate the process. The Bureau of Human Resources will then convene a meeting of the Department and the union. The parties will examine the data regarding vacancies, turnover, and market pay before determining whether a recruitment and retention adjustment is appropriate.

If there is any disagreement between the parties, the union, the Bureau and the Department each get one vote, and the majority will rule. In practice, this means that management will get two votes to workers' one. What we have experienced, and what this bill would address, is that management will disregard the data and stonewall the process.

To highlight one example: in 2018, MSEA initiated the process on behalf Emergency Communications Specialists—the State's 911 dispatchers. All of the statutory criteria were met. Statewide, approximately 25% of the positions were vacant, and the State was in the process of closing the regional call center in Gray due to insufficient staff. In Augusta, the vacancy rate was approximately 40%, and workers were mandated overtime shifts, frequently working back-to-back 16-hour days. Market pay data showed that they were significantly underpaid. However, despite all of the criteria being met, both the Bureau and the Department voted against any recruitment and retention adjustment.

Four years later, in 2022, MSEA again initiated the process for the same group of workers. This time, management granted the requested and granted a 15% adjustment. The facts on the ground hadn't changed. If anything, the situation was slightly better than it had been four years earlier. But statewide vacancies remained above 20%, Augusta workers were still being mandated to work overtime shifts, and pay remained woefully behind the market. Even the Bureau representative was the same one that had denied it four years earlier. The only thing that had changed was the Administration.

More recent examples also highlight the need for accountability and objectivity in the process. Specifically, over the last 15 months, MSEA has initiated four different requests on behalf of different work groups and classifications, including staff at the Office of Child and

Family Services. In each instance, the Bureau has ignored the requests and failed to convene the committee.

LD 1744 would address these issues by introducing accountability and objectivity into the process. This bill will ensure that, at the end of the day, the issue will go before an objective third-party neutral who will make a determination based on the data.

The second primary component of this LD 1744 would ensure that when a classification receives an adjustment, other classifications in the same job series or job family would be eligible as well. We have past examples where an adjustment to one classification resulted in extreme salary compression with the next higher title, meaning that workers will be asked to take on additional responsibilities for a de minimis pay increase. This creates a disincentive for promoting. The change in this legislation would provide a statutory mechanism to address salary compression and maintain adequate raises along a career path.

Thank you, and I will be happy to answer any questions.