

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
107TH LEGISLATURE
FIRST SPECIAL SESSION

(Filing No. H-1115)

COMMITTEE AMENDMENT "A" to H.P. 1997, L.D. 2197, Bill,
AN ACT Redistributing the Powers of the Executive Council."

Amend said Bill by striking out section 10 and inserting
in place thereof the following:

'Sec. 10. 3 MRSA §4, first ¶, as enacted by P.L. 1967,
c.427, §1, is amended to read:

A postaudit of all accounts and other financial records
of the Legislature and the Executive Department of the Governor,
except the Governor's Expense Account, shall be performed at
least once every 2 years by independ^{ent}/certified public account-
ants designated by the Governor ~~and Council.~~'

Further amend said Bill by striking out all of section 22
and inserting in place thereof the following:

'Sec. 22. 4 MRSA §955-A, first sentence, as enacted by
P.L. 1965, c.74, is amended to read:
Whenever the ~~Governor and Council~~ Secretary of State, upon com-
plaint, after due notice and hearing, shall find that a notary
public or justice of the peace has performed any duty imposed
upon him by law in an improper manner, or has performed acts
not authorized by law, the ~~Governor~~ Secretary of State may re-
move such notary public or justice of the peace from office.'

Further amend said Bill by inserting after section 31 a
new section to read:

'Sec. 31-A. 5 MRSA §82, as repealed and replaced by P.L. 1975, c.87, §2, is repealed and the following enacted in place thereof:

§82. Appointment of notaries public and justices of the peace; renewal of commissions
The Governor shall appoint justices of the peace for an initial term only.

The Secretary of State shall appoint all notaries public and shall have the authority to renew commissions of notaries public and justices of the peace. The Secretary of State shall promulgate rules and regulations relating to the appointments of notaries public and to the issuance of renewals of commissions of notaries public and justices of the peace.

The Secretary of State shall provide written notice of the expiration of their commissions to notaries public and justices of the peace 30 days prior to the expiration date. Failure to receive a notice shall not affect the expiration date of a commission.

The Secretary of State, upon receiving notice of the qualification of any justice of the peace and upon appointing any notary public, shall immediately notify the register of probate and the clerk of the judicial courts of the county where the officer resides of the officer's appointment and qualifications.'

Further amend said Bill by striking out all of section 51 and inserting in place thereof the following:

'Sec. 51. 5 MRSA §281, last ¶, as repealed and replaced by P.L. 1971, c.615, §1, is amended to read:

The department shall be under the supervision and control of a Commissioner of Finance and Administration, ~~as heretofore appointed and~~ hereinafter in this chapter called "the commissioner."

Further amend said Bill by inserting after section 51, 2 new sections to read as follows:

'Sec. 51-A. 5 MRSA §282, first ¶, as repealed and replaced by P.L. 1971, c.615, §2, is amended to read:

The commissioner may, with the approval of the Governor ~~and Council~~, appoint a deputy commissioner, who shall be the chief of one of the department bureaus and shall perform the duties of the commissioner during ~~his~~ 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 employ the bureau chiefs, except the Director of the Bureau of Alcoholic Beverages and the State Purchasing Agent, as may be necessary, with the approval of the Governor ~~and Council~~. 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. 51-B. 5 MRSA §283, sub-§4, is 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;

Further amend said Bill by inserting after section 52, a new section to read:

as enacted by P.L. 1971, c. 497 §1 and
'Sec. 52-A. 5 MRSA §287, /as amended by P.L. 1971, c.615,
§4, is further amended to read:

§287. Department; commissioner

The Department of Finance and Administration as heretofore established shall serve as the principal administrative and fiscal department of the State Government, coordinate financial planning and programming activities of departments and agencies of the State Government for review and action by the Governor and Council, prepare and report to the Governor and to the Legislature financial data and statistics, provide insurance advice for the State Government, establish and administer a master plan for the orderly development of future state buildings and grounds in the Capitol Area of the City of Augusta, develop and supervise the state purchasing policy and administer under the direction of the Liquor Commission the laws relating to legalized alcoholic beverages within this State. The Department of Finance and Administration shall consist of a Commissioner of Finance of

~~and Administration appointed by the Governor with the advise and consent of the Council to serve a term coterminous with the Governor, subject to removal for cause by the Governor and--~~
~~Council,~~ and the following as heretofore created and established: the Maine Insurance Advisory Board; the Capitol Planning Commission and the Liquor Commission, except the Enforcement Division thereof. The Commissioner of Finance and Administration shall be appointed by the Governor, subject to review by the Joint Standing Committee on Appropriations and Financial Affairs and to confirmation by the Legislature and shall hold office during the pleasure of the Governor.'

Further amend said Bill in section 67 by striking out all of subsection 6 of that part designated "§1507." and inserting in place thereof the following:

'6. Claims. The Governor shall allocate funds from the account for the payment of claims approved or partially approved by the State Claims Board under section 1510.

7. Procedure. All allocations from the State Contingent Account shall be supported by a statement of facts setting forth the necessity for the allocation. A copy of each order for an allocation, together with the statement of facts, shall be provided to the Legislative Finance Officer, to the President of the Senate and to the Speaker of the House of Representatives when the allocation is made.'

Further amend said Bill by striking out all of section 69 and inserting in place thereof the following

'Sec. 69. 5 MRSA §1510, as enacted by P.L. 1975, c.313, is repealed and the following enacted in place thereof:

§1510. Certain claims against the State

1. State Claims Board to consider claims of \$2,000 or less. Every claim against the State or any of its agents, which is not submitted under a specific statutory provision other than this section and which does not exceed the sum of \$2,000, shall be submitted to the State Claims Board, which shall approve, partially approve or disapprove that claim. No claim shall be submitted to the Legislature without having been submitted to the board. The appeal from the disapproval or partial approval of a claim shall be by introduction of a bill in the Legislature.

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31 → These claims shall include but shall not be limited to claims for damage or injury caused by patients, inmates, prisoners in the care or custody of the Department of Mental Health and Correc-

tions or of any institution administered by a department, by children in the custody of the Department of Human Services and by wild animals.

2. Jurisdiction. The jurisdiction of the State Claims Board over such claims includes those claims which have arisen prior to January 4, 1977 unless such claims have been ruled upon by the Governor and Executive Council or by the Legislature prior to January 4, 1977.

3. Hearings. Hearings on these claims shall be held at a time and place as the board shall determine. The chairman shall assign either one or three members to hear and determine each claim. Except as otherwise provided in this section, the board shall, insofar as applicable, employ the procedures set forth in Title 23, chapter 3, subchapter III.

4. Rules and regulations; report. The board may adopt rules and regulations to implement this section. The board shall, on or before January 30th of each year, report to the Legislature on all claims filed pursuant to this section.

5. Payment of claims. Any claim which has been allowed by the State Claims Board shall be paid from funds allocated by the Governor from the State Contingent Account.'

Further amend said Bill in section 85 by striking out in the 6th line (5th line in L.D.) the underlined words "State Government" and inserting in place thereof the underlined word 'Judiciary'

Further amend said Bill in section 110 by inserting in the 6th line (5th line in L.D.) after the ~~stricken~~ out word "~~Council~~" and before the period the following underlined words: 'and subject to review by the Joint Standing Committee on Business Legislation and to confirmation by the Legislature'

Further amend said Bill by striking out all of section 163-A.

Further amend said Bill by striking out all of section 228 and inserting in place thereof the following:

'Sec. 228. 22 MRSA §4789, first sentence is amended to read:

The Governor ~~and Council~~ and the governor of the tribe may draw warrants on the State Treasury for any sum not exceeding the interest on the price of the 4 townships purchased by the State of the Penobscot tribe in June, 1833, and of any other money paid into the treasury, and for the full amount of rents paid in as aforesaid.

Further amend said Bill by inserting after section 234, a new section to read:

'Sec. 234-A. 23 MRSA §61, first ¶, 2nd sentence, as amended by P.L. 1975, c.194, is further amended to read:

The Governor ~~and Council~~ on recommendation of the Department of Transportation may sell and convey on behalf of the State the

in
 interests of the State/property taken or acquired by purchase
 under chapters 1 to 19 and deemed no longer necessary for the
 purposes hereof.'

Further amend said Bill by striking out section 235 and
 inserting in place thereof the following:

'Sec. 235. 23 MRSA §151 is amended to read:

§151. Purposes

The purposes of this subchapter are to establish an inde-
 pendent, impartial board composed of ~~men~~ persons well learned
 in the elements that may be properly considered in the deter-
 mination of fair market value of property taken in condemnation
 proceedings; to empower such board to make awards of just com-
 pensation in highway condemnations and to establish before
 such board a procedure designed to afford to any interested
 party an opportunity to appear, present his case and have his
 rights fully protected without the necessity for retaining pro-
 fessional assistance; to thus provide to any interested party
 a prompt, efficient and inexpensive method of determination of
 just compensation and prompt payment of all or part of such com-
 pensation without prejudice to any right of appeal allowed.'

Further amend said Bill by striking out all of section 236
 and inserting in place thereof the following:

'Sec. 236. 23 MRSA §152, first 2 ¶¶, as amended,
 are \longleftrightarrow further amended to read:

J Or R.

The ~~Land-Damage-Board~~ State Claims Board, as heretofore established and formerly known as the Land Damage Board, shall consist of 5 members. Four of said members shall be appointed by the Governor, ~~with the advice and consent of the Council~~, 2 of whom shall be qualified appraisers and 2 of whom shall be attorneys-at-law. The Governor shall designate one of the attorneys-at-law to be chairman. The members of the board appointed by the Governor shall serve for terms of 4 years, ~~except the Governor, with the advice and consent of the Council, shall appoint the members initially so that the term of one member shall be for one year, the term of one member shall be for 2 years, the term of one member shall be for 3 years and the term of one member shall be for 4 years.~~ They shall be sworn, and for inefficiency, willful neglect of duty or for malfeasance in office may, after notice and hearing, be removed by the Governor ~~and Council~~ on the address of both branches of the Legislature or by impeachment. In case of a vacancy occurring through death, resignation or removal, ~~the Governor, with the advice and consent of the Council,~~ shall appoint a successor for the whole term of the member whose place he takes, subject to removal as aforesaid.

The Governor, ~~with the advice and consent of the Council,~~ shall set the rate of pay on a per diem basis which each member of the ~~Land-Damage~~ State Claims Board shall receive and they

shall be remunerated for all expenses necessarily incurred in the performance of their official duties.'

Further amend said Bill by inserting after section 236 a new section to read:

'Sec. 236-A. 23 MRSA §152, last ¶, as amended by P.L. 1967, c.494, §18, is further amended to read:

The 5th member of the board shall be appointed for each hearing or series of hearings within the county where the land taken lies. He shall be a member of the board of county commissioners of the county wherein the land taken is situated and shall be appointed by the chairman of the Land-Damage State Claims Board upon recommendation which shall be made, upon request, by the board of county commissioners of that particular county. In the event that any board of county commissioners should fail to make the required recommendation, then the chairman of the Land-Damage State Claims Board may appoint a member of such board to serve. He shall be sworn by the chairman of the Land-Damage State Claims Board and shall serve as a member of that board only for the particular hearing or hearings for which he is appointed. He shall participate fully in such hearings and the awards made as a result thereof. Each such member shall be paid at the same per diem rate as that fixed for other members of the board. Any member of the board of county commissioners thus designated shall serve only for the particular hearing or hearings set forth in his appointment and such service shall be as a member of the Land Damage State Claims Board and not in his capacity as a member of the board of county commissioners.'

Further amend said Bill by striking out section 309 and inserting in place thereof the following:

'Sec. 309. 30 MRSA §103 is amended to read:

§103. -other times

When no choice is effected or a vacancy happens in the office of county commissioner by death, resignation, removal from the county or for any other reason, the Governor ~~with the advice and consent of the Council~~ shall appoint a person to fill the vacancy, who shall hold office until the first day of January after another has been chosen to fill the place. In the case of a vacancy in the term of a commissioner who was nominated by primary election before the general election, the commissioner appointed by the Governor shall be enrolled in the same political party as the commissioner whose term was vacant.'

Further amend said Bill by striking out all of section 311 and inserting in place thereof the following:

'Sec. 311. 30 MRSA §104 is amended by adding after the 2nd sentence a new sentence to read:

In the case of a vacancy in the term of a commissioner who was nominated by primary election before the general election, the commissioner appointed by the Governor shall be enrolled in the same political party as the commissioner whose term was vacant.'

Futher amend said Bill by striking out all of section 312 and inserting in place thereof the following:

'Sec. 312. 30 MRSA §451, last ¶, 2nd sentence, as repealed and replaced by P.L. 1973, c.567, §7, is repealed.'

Further amend said Bill by inserting after section 312, a new section to read:

'Sec. 312-A. 30 MRSA §455 is enacted to read:
§455. Removal from office

The Justices of the Supreme Judicial Court shall have jurisdiction to remove any district attorney from office, by majority vote of the Justices sitting, upon complaint filed with the Court by the Attorney General, and after notice and hearing, as provided in this section.

1. Proceedings. Proceedings under this section shall be expedited insofar as practicable and shall take precedence over all other matters except requests for opinions of the Justices and petitions for writs of Habeas Corpus.

2. Proceeding complaint. The complaint in a proceeding under this section shall contain a short and plain statement of facts showing that grounds for removal exist. The proceedings shall be conducted in accordance with the Rules of Civil Procedure and the Rules of Evidence, except that discovery procedures may be used only by order of the Court on motion for cause

shown and the Court may modify any rule or restrict its applica-
tion as may be necessary or appropriate to expedite the proceed-
ing and insure that the Court is as fully informed of the rele-
vant and material facts as practicable.

3. Violation of statutes. If a majority of the Justices
sitting finds, by a preponderance of clear and convincing evi-
dence, that the respondent district attorney has violated a
statute or is not performing his duties faithfully and effi-
ciently, and finds in consequence that removal from office is
necessary in the public interest, judgment to that effect shall
be entered, and the respondent shall thereby be removed from
office as district attorney.'

Further amend said Bill by striking out all of section 314
and inserting in place thereof the following:

'Sec. 314. 30 MRSA §552, as repealed and replaced by P.L.
1973, c.567, §17, is amended to read:

§552. Appointment of substitute on death or removal

Whenever the office of the district attorney becomes vacant
by reason of the death, permanent incapacity, removal from
office under section 455 or removal from the prosecutorial dis-
trict of the incumbent of the office, except as provided for in
section 452, the Governor ~~with the advice and consent of the~~
~~Council~~ shall appoint a competent attorney, a resident of the
prosecutorial district affected, to serve as a substitute dis-
trict attorney until the first day of January in the year next
following an election for Representative.'

Further amend said Bill by inserting after section 403, a new section to read:

'Sec. 403-A. 37-A MRSA §1, sub-§§2, 3 and 4 are enacted to read:

2. Military Bureau. The Deputy Adjutant General shall be the director of the Military Bureau.

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.'

Further amend said Bill by striking out all of section 418, and inserting in place thereof the following:

'Sec. 418. 38 MRSA §341, as enacted by P.L. 1971, c.618, §8, is repealed and the following enacted in place thereof:

§341. Department

The Department of Environmental Protection, as heretofore established and hereinafter called "the department", shall protect and improve the quality of our natural environment and the resources which constitute it and shall enhance the public's opportunity to enjoy the environment by directing growth and development which will preserve for all time an ecologically sound and aesthetically pleasing environment. The department shall consist of the Board of Environmental Protection, which is the successor of the Environmental Improvement Commission and of a Commissioner of Environmental Protection, who shall be appointed by the Governor, subject to review by the Joint Standing Committee on Natural Resources and to confirmation by the Legislature and who shall serve at the pleasure of the Governor.'

Further amend said Bill by inserting after section 429, 2 new sections to read:

'Sec. 429-A. Intent of the Legislature. The present incumbents, as of the effective date of this Act, in the offices set forth in this section shall continue in their offices until the expiration of the terms, whether coterminous with the Governor or for a term of years, in which they currently serve and shall be subject to removal for cause by the Governor. Vacancies in

those offices occurring after the effective date of this Act shall be filled according to the applicable provisions of this Act and successors in these offices after that date shall serve subject to the applicable provisions of this Act.

The offices to which this section applies are the Commissioner of Finance and Administration as described in Title 5, section 287; the Commissioner of Agriculture as described in Title 7, section 1; the Commissioner of Business Regulation as described in Title 10, section 8001; the Commissioner of Inland Fisheries and Wildlife as described in Title 12, section 1951; the Commissioner of Marine Resources as described in Title 12, section 3451; the Commissioner of Conservation as described in Title 12, section 5011; the Commissioner of Educational and Cultural Services as described in Title 20, section 1-A; the Commissioner of Human Services as described in Title 22, section 1; ~~The~~ Commissioner of Transportation as described in Title 23, section 4205; the Commissioner of Public Safety as described in Title 25, section 2901 (and the Chief of the State Police, if the same person, as described in Title 25, section 1501); the Commissioner of Manpower Affairs as described in Title 26, section 1401; the Commissioner of Mental Health and Corrections as described in the Title 34, section 1; and the Commissioner of Environmental Protection as described in Title 38, section 341.

Sec. 429-B. Transitional provisions. The Secretary of State shall have jurisdiction and control over all records and documents in the possession of the Executive Council at the effective date of this Act.

The desk and chair in the Executive Council's chamber in the State House shall, on the effective date of this Act, become the property of the State Law Library. Each councillor in office on the effective date of this act shall designate a public place within his council district to receive, and use for some public purpose, the desk and chair used by that councillor.

All other property and equipment belonging to or allocated for the use of the Executive Council shall, on the effective date of this Act, become the property of the Bureau of Public Improvements, Department of Finance and Administration. The Executive Council's chamber in the State House shall, after the effective date of this Act, revert to its use prior to becoming the Council's chamber.'

Statement of Fact

The purposes of these amendments are to clarify certain sections and to take care of oversights.

Section 10 of the bill is amended only to add that the accountant retain for the postaudit be a certified public accountant.

The amendment to section 22 gives the Secretary of State the power to remove notaries public and justices of the peace. This

change is necessitated by the new section 31-A which corrects an oversight in the bill by providing a new means of appointing notaries and justices of the peace. This section gives the power of appointment of notaries public to the Secretary of State. The Governor appoints justices of the peace for an initial term only.

The amendments to sections 51 and 52-A correct a drafting error. In the bill, the appointment of the Commissioner of Finance and Administration was placed in the wrong section.

Sections 51-A and 51-B are added to the bill to make the State Purchasing Agent subject to confirmation by the Legislature.

The amendment to section 69 clarifies the provisions regarding the transfer of the handling of certain claims against the State from the Executive Council to the State Claims Board, formerly the Land Damage Board. Sections 235, 236 and 236-A in the amendment also have this purpose. The section on the procedure for such claims is taken out of Title 23 to avoid any confusion with the board's other duties relating to the taking of property for highway purposes. The amendment provides for paying such claims out of the State Contigent Account and sets out in greater detail the procedure and jurisdiction of the board in these cases. Section 67 of the bill, the provision on the State Contigent Account, is amended for this purpose.

The amendment to section 85 transfers the review of nominations for the position of Administrative Court Judge from the State Government Committee to the Judiciary Committee.

The amendment to section 110 makes the appointment of the Superintendent of Banking subject to review by the Business Legislation Committee and to confirmation by the Legislature.

Section 163-A, which created a Pardon and Commutation Advisory Board, is deleted. The Parole Board, which now has the duty of advising the Governor and Council on pardons, can continue this function.

Section 228 of the bill is amended to grant to the governor of the Penobscot tribe a role in place of the Executive Council in the handling of certain tribal funds.

The new section 234-A corrects an omission in the bill. The Council's role in deciding on the sale of certain property taken for highway purposes is eliminated.

Sections 235, 235, and 236-A, as noted above, clarify the procedures of the State Claims Board.

The amendments of sections 309 and 311 clarify wording on the appointment of vacancies to the office of County Commissioner.

Section 312 of the bill concerned the removal of district attorneys, a power which the bill transferred from the Governor and Council to the Governor and Attorney General. The committee, after consultation with the Attorney General, proposes a new procedure, which is set forth in the new section 312-A in the amendment. This procedure would require a complaint to, a hearing before and a decision by the Supreme Judicial Court, in place of the Governor and the Attorney General. Section 314 of the bill is also amended to provide for the Governor to fill a vacancy resulting from such removal by an appointment of a successor to serve until an election can be held.

The new section 403-A corrects an oversight in a bill, passed in the Regular Session, which inadvertently omitted certain subsections dealing with the appointment of bureau directors in the Department of Military, Civil Emergency Preparedness and Veterans Services. The amendment re-enacts those provisions without the references to the Executive Council.

The amendment to section 418 clarifies the wording of the section, without any substantive change.

The new section 429-A, Intent of the Legislature, provides that the commissioners of departments who are now serving terms of years or terms coterminous with the Governor will continue to serve these terms. Persons appointed to those offices after the effective date of this act would serve at the pleasure of the Governor, as the bill provides.

The new section 429-B is a transitional provision dealing with the records and the equipment of the Executive Council.

Reported by the Committee on State Government.

Reproduced and distributed under the direction of the Clerk
of the House.
3/29/76

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