

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)

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1421

S. P. 494

In Senate, March 17, 1971

Referred to Committee on State Government. Sent up for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Tanous of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT to Create the Department of Manpower Affairs.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 26, c. 19, additional. Title 26 of the Revised Statutes is amended by adding a new chapter 19 to read as follows:

CHAPTER 19

DEPARTMENT OF MANPOWER AFFAIRS

§ 1401. Department, secretary

There is created and established the Department of Manpower Affairs to achieve the most effective utilization of the manpower resources in the State by developing and maintaining an accountable state manpower policy, by insuring safe working conditions and protection against loss of income and by enhancing the opportunities of the individual to improve his economic status to consist of a Secretary of Manpower Affairs appointed by the Governor, with the advice and consent of the Council, to serve at the pleasure of the Governor and the following as heretofore created and established: Maine Employment Security Commission, Department of Labor and Industry, the Manpower Training Division of the Bureau of Vocational Education of the Department of Education and the Industrial Accident Commission.

The secretary shall be the chief administrative officer of the department and shall employ, subject to the Personnel Law, such bureau and division heads and other employees as may be necessary to carry out the work of the department.

The secretary shall organize and from time to time reorganize the department into such bureaus and divisions as may be necessary to carry out efficiently the work of the department.

§ 1402. Deputies

Subject to the Personnel Law, the secretary may appoint a first deputy secretary, and may appoint one or more additional deputies.

The deputies shall perform such duties and exercise such powers as the secretary may from time to time authorize. The first deputy shall be acting secretary during a vacancy in the office of secretary or during the incapacity of the secretary.

Sec. 2. R. S., T. 26, § 41, repealed and replaced. Section 41 of Title 26 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

§ 41. Commissioner; personnel; salaries; expenses

A State Department of Labor and Industry, as heretofore established and hereinafter in this Title called the "department", shall be maintained within the Department of Manpower Affairs and under the overall direction of the Secretary of Manpower Affairs and shall be under the day to day direction of an officer whose title shall be Commissioner of Labor and Industry and State Factory Inspector, hereinafter in this Title, except in chapter 13, called the "commissioner". He shall be appointed by the secretary, subject to the Personnel Law, and shall receive an annual salary and in addition a salary annually for his services as a member of the Industrial Accident Commission and his actual necessary cash expenses while away from his office on official business of the Industrial Accident Commission.

The secretary shall appoint, subject to the Personnel Law, such employees as may be necessary including a deputy who shall be clerk of the department and deputy state factory inspector. The commissioner and deputy state factory inspector shall receive their actual traveling expenses. The commissioner shall appoint a woman factory inspector.

Sec. 3. R. S., T. 26, § 1081, repealed and replaced. Section 1081 of Title 26 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

§ 1081. Executive Director

1. Executive director. The Maine Employment Security Commission, as heretofore created by previous enactment, shall be abolished as officers but not as an agency as soon as their successor as provided for in this Act is appointed and qualified. The "commission" shall be succeeded by an executive director who shall be appointed by the Secretary of Manpower Affairs, subject to the Personnel Law, and shall be paid his salary and expenses from the Employment Security Administration Fund.

2. Duties. The executive director shall succeed to the duty of the commission to administer this chapter. After he has succeeded to this function,

whenever in this chapter the word "commission" appears it shall thereafter mean "executive director" and the executive director shall exercise all of the powers heretofore exercised by the commission except those that are specifically revised by amendment to this chapter.

Sec. 4. R. S., T. 26, § 1082, sub-§§ 5 and 6, repealed and replaced. Subsection 5, as amended, and subsection 6 of section 1082 of Title 26 of the Revised Statutes, are repealed and the following enacted in place thereof:

5. **Employment Security Council.** The Secretary of Manpower Affairs shall appoint an Employment Security Council which, when it is appointed and qualified shall succeed the State Advisory Council which shall then be abolished. The Employment Security Council shall consist of 9 men and women members composed of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations and an equal number of members representing the general public. These members shall each be appointed to a 4-year term except that when the council is first appointed, one member from each category of representatives shall be appointed for a 2-year term and one member from each category of representatives shall be appointed for a 3-year term. Such council shall meet upon the call of the executive director or its chairman but no less frequently than 4 times a year and shall aid and advise the executive director in formulating policies and resolving problems related to the administration of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. The Employment Security Council may make recommendations to the Legislature for such changes in this chapter as in their opinion will aid in accomplishing the objectives of this chapter. Each member of the Employment Security Council shall be compensated in the amount of \$30 for each day in attendance upon a meeting of the council in addition to reimbursement for any necessary expenses.

6. **Duties of executive director.** The executive director, with the advice and aid of such Employment Security Council, may take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends carry on and publish the results of investigations and research studies.

Sec. 5. R. S., T. 26, § 1194, sub-§§ 1-4, amended. Subsections 1 to 4 of section 1194 of Title 26 of the Revised Statutes are amended to read as follows:

1. **Filing.** Claims for benefits shall be made in accordance with such regulations as the ~~commission~~ executive director may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each

such individual at the time he becomes unemployed a printed statement of such regulations. Such printed statements shall be supplied by the ~~commission~~ **executive director** to each employer without cost to him.

2. **Determination.** A representative designated by the ~~commission~~ **executive director**, and in this chapter referred to as a deputy, shall promptly examine the first claim filed by a claimant in each benefit year and shall determine the weekly benefit amount and maximum benefit amount potentially payable to the claimant during such benefit year in accordance with section 1192, subsection 5.

The deputy shall promptly examine all subsequent claims filed and, on the basis of the facts found by him, shall determine whether or not such claim is valid with respect to sections 1192 and 1193, other than section 1192, subsection 5, or shall refer such claim or any question involved therein to an appeal tribunal ~~or to the commission~~, which shall make a determination with respect thereto in accordance with the procedure described in subsection 3, except that in any case in which the payment or denial of benefits will be subject to section 1193, subsection 4, the deputy shall promptly transmit a report with respect to that subsection to the ~~commission~~ **executive director** upon the basis of which the ~~commission~~ **executive director** shall notify ~~its~~ **his** appropriate deputies as to the applicability of that subsection.

The deputy shall determine in accordance with section 1221, subsection 3, paragraph A, the proper employer's experience rating record, if any, against which benefits of an eligible individual shall be charged, if and when paid. The deputy shall promptly notify the claimant and any other interested party of the determinations and reasons therefor. Unless the claimant or any such interested party, within 7 calendar days after such notification was mailed to his last known address, files an appeal from such determination, such determination shall be final and benefits shall be paid or denied in accordance therewith. If new evidence or pertinent facts that would alter such determination become known to the deputy prior to the date such determination becomes final, a redetermination is authorized, but such redetermination must be mailed before the original determination becomes final. If an appeal is duly filed, benefits with respect to the period of any possible disqualification involved shall be paid only after the final determination of the ~~commission~~ **board of review**. If an appeal tribunal affirms a determination of a deputy or the ~~commission~~ **board of review** affirms a determination of an appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such determination is finally reversed, no employer's account shall be charged with benefits so paid. If an appeal tribunal disqualifies a claimant for a specified period of time, benefits shall be paid following the expiration of the period of disqualification if the claimant is otherwise qualified to receive them, regardless of any appeal which may thereafter be taken. If the claimant's appeal relates to the weekly benefit amount or maximum benefit amount potentially payable to him in the benefit year, benefits may nevertheless be paid to the extent of the deputy's determination and prior to the final determination of the ~~commission~~ **board of review**.

3. **Appeals.** Unless such appeal is withdrawn, an appeal tribunal, after

affording the parties reasonable opportunity for fair hearing, shall affirm, modify or set aside the findings of fact and decision of the deputy. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the ~~commission~~ **board of review**, unless within 15 days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection 5. When an employer appeals from a deputy's decision in favor of a claimant and such appeal is limited solely to the issue as to which of one or more employer experience rating records or the general fund shall be charged, such appeal shall not interrupt the payment of benefits for continuous unemployment.

4. **Appeals tribunals.** To hear and decide disputed claims, the ~~commission~~ **executive director** shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of 3 members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter 2 members shall serve at the pleasure of the ~~commission~~ **executive director** and be paid a fee of not more than \$10 per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the ~~commission~~ **executive director** in any case in which he is an interested party. The ~~commission~~ **executive director** may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present. **The executive director may transfer to another appeals tribunal the proceedings on any claim pending before an appeals tribunal. Any proceedings so removed shall be heard in accordance with the requirements in subsection 3.**

Sec. 6. R. S., T. 26, § 1194, sub-§ 5, repealed and replaced. Subsection 5 of section 1194 of Title 26 of the Revised Statutes, is repealed and the following enacted in place thereof:

5. **Board of review.** To review decisions of the executive director or an appeals tribunal involving benefits, the Governor shall appoint a board of review. The board of review shall consist of 3 members composed of an employer representative and an employee representative who may fairly be regarded as representative because of their vocation, employment of affiliations and an individual representing the general public. The members shall each be appointed to a 4-year term except that when the board of review is first appointed, the member representing the general public shall be appointed for a 4-year term, the employee representative shall be appointed for a 3-year term and the employer representative shall be appointed for a 2-year term. The public member shall serve as chairman of the board and the board shall meet from time to time subject to his call. Each member of the board shall be compensated in the amount of \$50 for each day in attendance upon a meeting of the board in addition to reimbursement for any necessary expenses. The executive director shall provide office, supply and personnel facilities sufficient to enable the board to carry out its responsibilities with efficiency and

dispatch. The board shall adopt such regulations and procedures as are needed for the orderly performance of its review function.

The board of review shall permit any of the parties to a decision of an appeals tribunal involving benefits, including the executive director, to initiate a further appeal before it. The board may affirm, modify or set aside any decision or deny an appeal on the basis of the evidence previously submitted in such case or direct the appeal tribunal to take additional evidence and certify it to the board. The board shall promptly notify the interested parties of its findings and decision. If an appeal to the board is denied the decision of the appeal tribunal shall be deemed to be the decision of the board for the purpose of judicial review and shall be subject to judicial review within the time and in the manner provided for with respect to decisions of the board, except that the time limitations shall run from the date on which notice of the order of the board denying the appeal is mailed to the parties. The board of review shall have jurisdiction over all appeals and other proceedings involving benefits pending before the commission on the date this Act becomes effective.

Sec. 7. R. S., T. 26, § 1194, sub-§§ 6 and 7, amended. Subsection 6 and 7 of section 1194 of Title 26 of the Revised Statutes are amended to read as follows:

6. **Procedure.** The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the ~~commission~~ executive director for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

7. **Witness fees.** Witnesses subpoenaed pursuant to this chapter shall be allowed fees at a rate fixed by the ~~commission~~ executive director to be paid out of the Employment Security Administration Fund, except that no attendance or mileage fee shall be due or payable when a subpoena is issued to compel an employing unit to appear and produce records and reports for the purpose of making a determination as to liability or for the purpose of completing routine reports as provided under this chapter.

Sec. 8. R. S., T. 26, § 1194, sub-§§ 8 and 9, repealed and replaced. Subsections 8 and 9 of section 1194 of Title 26 of the Revised Statutes are repealed and the following enacted in place thereof:

8. **Appeal to courts.** Any decision of the board of review or the executive director shall become final 10 days after the date of notification or mailing thereof and any party aggrieved thereby, including the executive director in the case of a decision of the board of review, shall have 15 days thereafter in which to perfect his appeal to the courts. The executive director shall be deemed to be a party to any judicial act involving any such action and may be represented in any such judicial action by any qualified attorney who is

employed by the executive director and designated by him for that purpose, or at the executive director's request, by the Attorney General.

9. Appeal. Within 15 days after any decision has become final, the executive director or any other party aggrieved thereby who has exhausted his administrative remedies may appeal by commencing an action in the Superior Court of Kennebec County for the appeal of the decision, in which action any other party to the proceedings shall be made a defendant. In such action, a complaint which need not be verified, but which shall state the grounds upon which an appeal is sought shall be served upon each of the defendants. When the executive director is the party appealing, he may mail a copy of the complaint to each defendant and service will be deemed completed. In all other appeals, the complaint shall be served upon the executive director or upon such person as the executive director may designate and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the complaint as there are defendants and the executive director shall forthwith mail one such copy to each such defendant. With his complaint or his answer, the executive director shall certify and file with said court the original or certified copies of all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The executive director may also, in his discretion, certify to such court questions of law involved in any decision. In any judicial proceeding under this chapter, the findings of the board of review or executive director as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such actions, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil actions except actions arising under the Workmen's Compensation Law of this State. An appeal may be taken from the decision of the Superior Court of Kennebec County to the Supreme Judicial Court of the State, in the same manner, but not inconsistent with this chapter, as is provided in civil actions. It shall not be necessary, in any judicial proceeding under the provisions of this section, to enter objections to the rulings of the board of review or executive director and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the board of review or executive director shall enter an order in accordance with such determination. An appeal shall not act as a supersedeas or stay unless the board of review or executive director shall so order.

Sec. 9. R. S., T. 26, § 1194, sub-§ 10, amended. Subsection 10 of section 1194 of Title 26 of the Revised Statutes is amended to read as follows:

10. Determination may be reconsidered; appeal. The ~~commission~~ executive director may reconsider a determination with respect to the weekly benefit amount and maximum total amount of benefits for a claimant for any given benefit year, if ~~it~~ he finds that an error in computation or identity has occurred in connection therewith, or that wages have been erroneously reported, but no such redetermination shall be made after one year from the date of the original determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determina-

tion, in the manner prescribed in this section with respect to notice of an original determination. If the maximum amount of benefits is increased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase may be filed in the manner and subject to the limitations provided in subsection 2. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to an appeal by claimant with respect to subsequent benefits which may be affected by the redetermination. An appeal may be filed in the manner and subject to the limitations provided in subsection 2.

The ~~commission~~ **executive director** may reconsider a benefit payment for any particular week or weeks whenever it finds that an error in computation or identity has occurred in connection therewith or that earnings were erroneously reported, but no such redetermination may be made after one year from the date of payment for such week or weeks. Notice of any such redetermination shall be promptly given to the claimant. Unless the claimant files an appeal from such redetermination within 7 calendar days after such notification was mailed to his last known address such redetermination shall be final and benefits shall be paid or denied in accordance therewith.

Subject to the same limitations and for the same reasons, the ~~commission~~ **executive director** may reconsider the determination in any case in which the final decision has been rendered by an appeal tribunal, the ~~commission~~ **board of review** or a court, and may apply to the body or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

Sec. 10. R. S., T. 39, § 91, amended. The next to the last paragraph of section 91 of Title 39 of the Revised Statutes is amended to read as follows:

The ~~commission~~ **Department of Manpower Affairs** shall ~~appoint~~ **employ** a clerk and full-time or part-time reporters and such clerical assistance as may be necessary, subject to the Personnel Law.

Sec. 11. Transfer. All employees, equipment, personnel, records and funds of the Maine Employment Security Commission, the Department of Labor and Industry, the Industrial Accident Commission and the Manpower Training Division of the Bureau of Vocational Education of the Department of Education on the effective date of this Act are transferred to the Department of Manpower Affairs.

Sec. 12. Effective date. This Act shall be effective July 1, 1973; however, the authority to appoint a secretary contained in section 1 shall be effective 91 days after adjournment of the Legislature and said secretary shall be responsible for budget planning, preparation and submission for the Department of Manpower Affairs for the 1973-75 biennium.

STATEMENT OF FACT

This legislation implements the recommendations of the Legislative Research Committee, the State Planning Office and the Governor with reference to reorganization in this area.

Brought together under unified supervision are the Maine Employment Security Commission, the Department of Labor and Industry, the Manpower Training Division of the Bureau of Vocational Education of the Department of Education and the Industrial Accident Commission to achieve the purposes set out in section 1 of the Act. It is anticipated that both the Maine Manpower Advisory Committee and the Cooperative Area Manpower Planning System program can be administratively brought into the agency at a later time.