

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1331

H. P. 1004

House of Representatives, March 6, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Bustin of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Revising the Reorganization of the Department of
Manpower Affairs.

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

Sec. 1. R. S., T. 26, § 1081, sub-§ 1, repealed and replaced. Subsection 1 of section 1081 of Title 26 of the Revised Statutes, as amended by section 2 of chapter 620 of the public laws of 1971, is repealed and the following enacted in place thereof:

1. **Executive director.** The Maine Employment Security Commission, as heretofore created, shall be abolished as soon as its 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 Commissioner of Manpower Affairs subject to the Personnel Law. He shall be paid a salary from the Employment Security Administration Fund.

Sec. 2. R. S., T. 26, § 1081, sub-§ 2, repealed. Subsection 2 of section 1081 of Title 26 of the Revised Statutes, as amended, is repealed.

Sec. 3. R. S., T. 26, § 1081, sub-§ 2-A, additional. Section 1081 of Title 26 of the Revised Statutes, as amended, is further amended by adding a new subsection 2-A, to read as follows:

2-A. **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 R. S., T. 26, § 1081, sub-§ 3, repealed. Subsection 3 of section 1081 of Title 26 of the Revised Statutes, as amended by section 4 of chapter 620 of the public laws of 1971, is repealed.

Sec. 5. R. S., T. 26, § 1082, sub-§ 4, amended. The first sentence of subsection 4 of section 1082 of Title 26 of the Revised Statutes, as amended by section 8 of chapter 620 of the public laws of 1971, is further amended to read as follows:

Subject to other provisions of this chapter, the ~~Commissioner of Manpower Affairs~~ executive director is authorized to appoint, and prescribe the duties and powers of, and fix the compensation of such officers, accountants, attorneys, experts and other persons as may be necessary in the performance of his duties, subject to the Personnel Law.

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 R. S., T. 26, § 1082, sub-§ 5, repealed and replaced. Subsection 5 of section 1082 of Title 26 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

5. Employment Security Council. The Commissioner of Manpower Affairs shall appoint an employment security council which, when it is appointed, shall succeed the State Advisory Council, which shall then be abolished. The Employment Security Council shall consist of not more than 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 its chairman, the Commissioner of Manpower Affairs, and shall aid and advise the Commissioner of Manpower Affairs 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.

Sec. 7. R. S., T. 26, § 1082, sub-§ 6, amended. Subsection 6 of section 1082 of Title 26 of the Revised Statutes, as amended by section 10 of chapter 620 of the public laws of 1971, is further amended to read as follows:

6. Employment stabilization. The Commissioner of Manpower Affairs, with the advice and aid of such ~~advisory~~ employment security council as he may appoint, 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 to carry on and publish the results of investigations and research studies.

Sec. 8. R. S., T. 26, § 1194, sub-§ 3, amended. Subsection 3 of section 1194 of Title 26 of the Revised Statutes, as amended is further amended to read as follows:

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 then duly notified of such tribunal's decision, together with its reasons therefor, which subject to subsection 11 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, the claimant and employer may appeal to the ~~commission~~ board of review by filing an appeal in accordance with such ~~rules~~ regulations as the ~~commission~~ board of review shall prescribe, provided that the appealing party appeared at the hearing and was given notice of the effect of the failure to appear in writing prior to the hearing.

Sec. 9. 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 Commissioner of Manpower Affairs shall appoint a board of review. The board of review shall consist of 3 members composed of an employer representative and an employee representative 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 \$100 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, subject to subsection 3, 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. 10. R. S., T. 26, § 1194, sub-§§ 8 and 9, repealed and replaced. Subsection 8, as amended by section 32 of chapter 538 of the public laws of 1971 and subsection 9 of section 1194 of Title 26 of the Revised Statutes are repealed and the following enacted in place thereof:

8. Appeal to courts. Subject to subsection 11, and 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, 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 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. 11. R. S., T. 26, § 1194, sub-§ 10, amended. The last paragraph of subsection 10 of section 1194 of Title 26 of the Revised Statutes is amended to read as follows:

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. 12. R. S., T. 26, § 1221, sub-§ 10, ¶ E, amended. The first sentence of paragraph E of subsection 10 of section 1221 of Title 26 of the Revised Statutes, as enacted by section 41 of chapter 538 and as amended by section 11 of chapter 620, both of the public laws of 1971, is further amended to read as follows:

The ~~Commissioner of Manpower Affairs~~ **executive director**, in accordance with such regulations as he may prescribe, shall notify each such employer of any determination which is made of its status as an employer and of the effective date of any election which it makes and any termination of such election.

Sec. 13. R. S., T. 26, § 1401, amended. Section 1401 of Title 26 of the Revised Statutes, as enacted by section 1 of chapter 499 and as repealed and replaced by section 12 of chapter 620, both of the public laws of 1971, is amended to read as follows:

§ 1401. Department; commissioner

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 Commissioner of Manpower Affairs appointed by the Governor with the advice and consent of the Council for a term coterminous with that of the Governor subject to removal for cause and the following ~~is~~

as heretofore created and established: The Employment Security Commission, the Department of Labor and Industry, the Maine Manpower Advisory Committee, the Cooperative Area Manpower Planning System and the Manpower Development Training Program.

The Commissioner of Manpower Affairs shall receive a fixed weekly salary and shall be paid from the administrative funds of the Employment Security Commission, the Bureau of Labor and Industry and from other program administrative funds he is authorized by statute to administer.

~~The Commissioner of the Department of Manpower Affairs shall also be chairman of the Employment Security Commission.~~ The commissioner shall have the following duties:

1. **Budget.** Prepare a budget for the department;
2. **Personnel.** Transfer personnel within the department to insure the efficient utilization of department personnel subject to the Personnel Law;
3. **Purchase.** Coordinate the purchase and use of all department equipment; and
4. **Review.** Review the function and operation of the department to insure that overlapping functions and operations are brought to the attention of the Governor and Legislature.

STATEMENT OF FACT

The purpose of this bill is reflected in the title.