

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1670

S. P. 475

In Senate, April 8, 1975

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Berry of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Abolish the Department of Business Regulation.

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

Sec. 1. § 281, MRSA § 281, as last amended by PL 1973, c. 537, § 3, is repealed and the following enacted in place thereof:

§ 281. Department; commissioner

The Department of Finance and Administration as heretofore established shall serve as the principal administrative and fiscal department of State Government; coordinate financial planning and programming activities of departments and agencies of 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 State Government and the Maine Maritime Academy; 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; administer under the direction of the Liquor Commission the laws relating to legalized alcoholic beverages within this State; regulate commercial sports; award just compensation in land condemnations; regulate real estate brokers and salesmen; and provide for consumer credit regulation.

The Department of Finance and Administration shall consist of a Commissioner of Finance and Administration as heretofore appointed and hereinafter in this chapter called "the commissioner," to be appointed by the Governor with the advice 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 In-

insurance Advisory Board; the Capitol Planning Commission; the Liquor Commission, except the Enforcement Division thereof; the Real Estate Commission; the Boxing Commission; the Running Horse Racing Commission; and the Land Damage Board.

Sec. 2. 5 MRSA § 282, 1st ¶, last 2 sentences, as repealed and replaced by PL 1971, c. 615, § 2, as amended to read:

The commissioner may employ such bureau ~~chiefs~~ **heads**, except the Director of the Bureau of Alcoholic Beverages, as may be necessary, with the approval of the Governor and Council. The bureau ~~chiefs~~ **heads** 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 and **except that the commissioner shall not have authority to exercise or interfere with the exercise of any discretionary statutory authority granted to the Bureau of Consumer Protection, which authority shall be exclusively within that bureau.**

Sec. 3. 5 MRSA § 283, sub-§ 8 is enacted to read:

8. **Bureau of Consumer Protection. The Bureau of Consumer Protection, the head of which shall be the Superintendent of Consumer Protection.**

Sec. 4. 5 MRSA § 283, last ¶, is amended to read:

In the absence of any bureau ~~chief~~ **head** from the State, or from his official duties, or in the event of a vacancy in the position of any one of them, the commissioner, or his authorized agent, may exercise the powers and perform the duties prescribed for such bureau ~~chief~~ **head, except as provided in section 282.**

Sec. 5. 5 MRSA chapter 13-A, as amended by PL 1971, c. 615, § 4, is repealed.

Sec. 6. 8 MRSA § 104, 2nd sentence, as enacted by PL 1973, c. 585, § 1, is amended to read:

The Commissioner of the Department of ~~Business Regulation~~ **Finance and Administration** shall employ, subject to the Personnel Law, the personnel that he deems necessary to discharge the duties of the department and shall outline their duties and fix their compensation, subject to the Personnel Law.

Sec. 7. 8 MRSA § 323, as repealed and replaced by PL 1973, c. 585, § 2, is amended to read:

§ 323. Assistants

The Commissioner of the Department of ~~Business Regulation~~ **Finance and Administration** is authorized to employ such personnel as he may deem necessary to provide adequate policing and to carry out the purposes of this chapter at such compensation on a per diem basis as said commissioner may prescribe, subject to the Personnel Law.

Sec. 8. 9 MRSA § 1, as repealed and replaced by PL 1973, c. 585, § 3, is amended to read:

§ 1. Department; commissioner and employees

The activities of the ~~Bureau~~ Department of Banks and Banking shall be directed by a ~~superintendent~~ Bank Commissioner, as heretofore appointed, who shall be appointed by the ~~Commissioner of the Department of Business Regulation~~ Governor, with the advice and consent of the ~~Governor and Council~~ and who shall hold his office for 5 years or until his successor is appointed and qualified and who may be removed from office by the Governor and Council for cause. No person shall be eligible for said office unless he shall have had at the time of his appointment at least 7 years' practical experience in one or more of the following capacities: As an executive officer of a savings and loan association, a trust company, a mutual savings bank or a national bank located in this or another state, or as an employee in the banking ~~bureau~~ department of this or some other state, or as an employee of a federal examining authority charged with examining financial institutions. He shall engage in no other business or profession. He shall receive his actual traveling expenses incurred in the performance of his duties.

The ~~superintendent~~ commissioner, with the approval of the ~~Commissioner of the Department of Business Regulation~~ may employ, subject to the Personnel Law, one or more deputy ~~superintendents~~ bank commissioners and as many examiners, assistant examiners and such other employees and clerks as the business of the ~~bureau~~ department may require. The ~~superintendent~~ commissioner may employ or engage such expert, professional or other assistance as may be necessary to assist the ~~bureau~~ department in carrying out its functions. The ~~superintendent~~ commissioner may train his employees or have them trained in such manner as he deems desirable, at the expense of the ~~bureau~~ department. All employees of the ~~bureau~~ department shall receive their actual expenses incurred in the performance of official duties. A deputy ~~superintendent~~ commissioner designated by the ~~superintendent~~ commissioner shall perform the duties of the ~~superintendent~~ commissioner whenever the latter shall be absent from the State, whenever he shall be directed to do so by the ~~superintendent~~ commissioner, whenever there shall be a vacancy in the office of the superintendent or whenever the ~~superintendent~~ commissioner shall be incapacitated from illness. In the event of a vacancy in the office of the ~~superintendent~~ commissioner, his incapacitating illness or absence from the State at a time when there is no deputy ~~superintendent~~ commissioner, the ~~Commissioner of the Department of Business Regulation~~ Governor may designate a special deputy ~~superintendent~~ commissioner to perform the duties of the ~~superintendent~~ commissioner for a time not exceeding 6 months.

During his term of office the ~~superintendent~~ commissioner or any employee of the ~~bureau~~ department shall not be an officer, director, trustee, attorney, stockholder or partner in any financial institution or national bank, federal savings and loan association or federal or state credit union or receive directly or indirectly any payment or gratuity from any such institution. This provision shall not prohibit being a depositor or shareholder in the case of state or federal savings and loan associations or credit unions, on the same terms as are available to the public generally or being indebted, provided that

such indebtedness is made known in writing to the ~~superintendent commissioner~~ and a record of such indebtedness is retained on file in the ~~bureau department~~ so long as such indebtedness is outstanding.

Sec. 9. ~~9-A MRSA § 6-103~~, 1st 4 sentences, as enacted by PL 1973, c. 762, § 1, are amended to read:

There is created and established the Bureau of Consumer Protection within the Department of ~~Business Regulation Finance and Administration~~. The Superintendent of Consumer Protection is the head of the Bureau of Consumer Protection. As used in this Act, "administrator" means the Superintendent of the Bureau of Consumer Protection. He shall be appointed by the Commissioner of the Department of ~~Business Regulation Finance and Administration~~ with the advice and consent of the Governor and Council, and shall report directly to the Commissioner of the Department of ~~Business Regulation Finance and Administration~~.

Sec. 10. ~~9-A MRSA § 6-104~~, sub-§ 1, ¶ G, as enacted by PL 1973, c. 762, § 1, is amended to read:

G. With the approval of the Commissioner of the Department of ~~Business Regulation Finance and Administration~~, appoint any necessary hearing examiners, clerks and other employees and agents and fix their compensation, subject to the Personnel Law; and

Sec. 11. ~~9-A MRSA § 6-104~~, sub-§ 3, 1st sentence, as enacted by PL 1973, c. 762, § 1, is amended to read:

The administrator shall report annually on or before January 1st to the Commissioner of the Department of ~~Business Regulation Finance and Administration~~ on the operation of his office, on the use of consumer credit in this State, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit.

Sec. 12. ~~10 MRSA c. 901~~, is repealed.

Sec. 13. ~~23 MRSA § 152~~, 5th and 6th ¶¶, as repealed and replaced by PL 1973, c. 585, § 5, are amended to read:

The board shall maintain an office in Augusta. The Commissioner of the Department of ~~Business Regulation Finance and Administration~~ shall appoint, subject to the Personnel Law, a clerk of the board to keep its records and to perform such other duties as the board shall prescribe. The clerk shall have authority to certify to all official acts of the board, administer oaths, issue subpoenas, and issue all processes, notices, orders or other documents necessary to the performance of the duties of the board.

The Commissioner of the Department of ~~Business Regulation Finance and Administration~~ shall appoint and fix the compensation of a reporter to the board, and shall review and approve all charges made by such reporter for transcripts of the record of hearings before the board. The Commissioner of the Department of ~~Business Regulation Finance and Administration~~ may appoint, subject to the Personnel Law, such clerical assistants for the board as he may deem necessary.

Sec. 14. 24-A MRSA § 5, as last repealed and replaced by PL 1973, c. 585, § 6, is repealed and the following enacted in place thereof:

§ 5. Commissioner; department defined

1. Commissioner. "Commissioner" means the Commissioner of the Department of Insurance.

2. Department. "Department" means the Department of Insurance.

Sec. 15. 24-A MRSA § 201, as last repealed and replaced by PL 1973, c. 585, § 2, is repealed and the following enacted in place thereof:

§ 201. Commissioner of Insurance; appointment; term

1. The Commissioner of Insurance is the head of the Department of Insurance.

2. The commissioner shall be appointed by the Governor with the advice and consent of the Council.

3. The commissioner shall hold his office for 5 years or until his successor has been appointed and has qualified.

Sec. 16. 24-A MRSA § 206, sub-§ 1, as last repealed and replaced by PL 1973, c. 585, § 8, is repealed and the following enacted in place thereof:

1. The commissioner may employ, subject to the Personnel Law, a first deputy commissioner and may employ one or more additional deputies.

Sec. 17. 32 MRSA § 4053, as repealed and replaced by PL 1973, c. 585, § 9, is amended to read:

§ 4053. Employees

The Commissioner of the Department of ~~Business Regulation Finance and Administration~~ may employ a secretary and such clerical assistants, technical assistants and investigators as he deems necessary to discharge the duties imposed by this chapter and shall outline their duties and fix their compensation, subject to the Personnel Law.

Sec. 18. 32 MRSA § 4055, last sentence, as amended by PL 1973, c. 585, § 10, is amended to read:

Such program shall be under the direction and supervision of the Commissioner of the Department of ~~Business Regulation Finance and Administration~~.

Sec. 19. Amendatory provision. Whenever in the Revised Statutes, Title 9, Title 32 or any other applicable Title the words "superintendent" meaning the Bank superintendent, "Bank Superintendent" or "Superintendent of Banks and Banking" appear, they shall mean "commissioner", "Bank Commissioner" or "commissioner of Banks and Banking", respectively. Whenever in the Revised Statutes, Title 9, Title 32 or any other applicable Title the words "bureau", meaning the Banking Bureau, "Banking Bureau" or "Bureau of Banks and Banking" appear, they shall mean "department",

“Banking Department”, or “Department of Banks and Banking”, respectively.

Sec. 20. Amendatory provision. Whenever in the Revised Statutes, Title 24-A or any other applicable Title the words “superintendent”, meaning the superintendent of insurance, “Insurance Superintendent” or “Superintendent of Insurance” appear, they shall mean “commissioner”, “Insurance Commissioner” or “Commissioner of Insurance” respectively. Whenever in the Revised Statutes, Title 24-A or any other applicable Title the words “bureau”, meaning the Bureau of Insurance, “Insurance Bureau”, or “Bureau of Insurance” appear, they shall mean “department”, “Insurance Department” or “Department of Insurance” respectively.

Sec. 21. Transitional provisions. All existing rules and regulations currently in effect and operation on the effective date of this Act, in any of the bureaus, commissions or boards referred to in this Act shall continue in effect until rescinded, amended or changed according to law.

The term “regulation” shall include, but is not limited to, any regulation, rule, order, administrative procedure, policy determination, directive, authorization, permit, license, privilege, form, blank, requirement, designation or agreement.

All employees and officials of the Bureau of Consumer Protection and the commissions and boards referred to in this Act are, on the effective date of this Act, transferred to the Department of Finance and Administration and shall continue in their employment or office after such effective date, without interruption of state service, unless such employment or office is terminated or abolished.

All employees and officials of the Bureau of Banks and Banking are, on the effective date of this Act, transferred to the Department of Banks and Banking and shall continue in their employment after such effective date, without interruption of state service, unless such employment or office is terminated or abolished.

All employees and officials of the Bureau of Insurance are, on the effective date of this Act, transferred to the Department of Insurance and shall continue in their employment or office after such effective date, without interruption of state service, unless such employment or office is terminated or abolished.

All appointments and deputizations heretofore made by the administrative head of the Department of Business Regulation in relation to the Bureaus of Banks and Banking and Insurance and by the superintendents of Banks and Banking and Insurance shall continue in force and effect on the effective date of this Act, unless such appointment or deputization is terminated or abolished.

All appointments and deputizations heretofore made by the Commissioner of the Department of Business Regulation in relation to the Bureau of Consumer Protection and by the Superintendent of Consumer Protection and the commissions and boards referred to in this Act shall continue in force

and effect on the effective date of this Act, unless revoked by the Commissioner of Finance and Administration.

All of the records of the Bureau of Banks and Banking shall remain in the custody and control of the Commissioner of Banks and Banking as required by the Revised Statutes, Title 9, section 3. All funds, equipment, and property of the Bureau of Banks and Banking, shall, notwithstanding the provisions of the Revised Statutes, Title 5, section 1585, be transferred, on the effective date of this Act to the Department of Banks and Banking, by the State Controller, upon recommendation of the State Budget Officer and upon approval of the Governor and Council.

All of the funds, equipment, records and property of the Bureau of Insurance, shall, notwithstanding the provisions of the Revised Statutes, Title 9, section 1585, be transferred, on the effective date of this Act, to the Department of Insurance, by the State Controller, upon recommendation of the State Budget Officer and upon approval of the Governor and Council.

All funds, equipment, property and records of the Bureau of Consumer Protection and the commissions and boards to be relocated under this Act to the Department of Finance and Administration, shall, notwithstanding the provisions of the Revised Statutes, Title 5, section 1585, be transferred, on the effective date of this Act, to the proper place in the organizational structure of the Department of Finance and Administration by the State Controller, upon recommendation of the State Budget Officer and upon approval of the Governor and Executive Council.

All records of the Department of Business Regulation not otherwise transferred under the provisions of this Act, shall, on the effective date of this Act, be transferred to the State Archives.

All property, funds and equipment of the Department of Business Regulation not otherwise transferred under the provisions of this Act, shall notwithstanding the provisions of the Revised Statutes, Title 5, section 1585, be transferred on the effective date of this Act by the State Controller as recommended by the State Budget Officer and approved by the Governor and Council.

It is the intent of the Legislature that nothing in this Act shall be construed to amend the Revised Statutes, Title 9, section 2 in regard to the assessment made upon banks and in regard to the expenditure of these assessments.

STATEMENT OF FACT

The purpose of this bill is to abolish the Department of Business Regulation, restoring the Bureaus of Banks and Banking and Insurance to department status, and transferring the Bureau of Consumer Protection, the Real Estate Commission, the Land Damage Board, the Running Horse Racing Commission, and the State Boxing Commission to the Department of Finance and Administration.

The Department of Business Regulation, consisting of 2 former departments (now bureaus) and several boards and commissions, was created by the 106th Legislature, with the expectation that reorganization would result in increased efficiency of operation of the several units of the new department. Experience has shown that the new department has not produced the hoped-for increased efficiency of operation, and therefore this restructuring of the units of the department is proposed.

Sections 1 and 5 of the bill are intended to consolidate portions of the statutes relating to the Department of Finance and Administration. The only substantive changes in these sections relate to the addition of units transferred from the abolished Department of Business Regulation.