

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1781

H. P. 1366

House of Representatives, April 3, 1975

On Motion of Mr. Bustin of Augusta, referred to Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Rolde of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Clarify the Administration of the Department of
Manpower Affairs.

Sec. 1. 26 MRSA § 1081, sub-§ 1, as amended by PL 1971, c. 620, § 2, is repealed and the following enacted in place thereof: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Sec. 2. 26 MRSA § 1081, sub-§ 2, as last amended by PL 1971, c. 620, § 3, is repealed.

Sec. 3. 26 MRSA § 1081, sub-§ 2-A is enacted to read:

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Sec. 4. 26 MRSA § 1081, sub-§ 3, as last amended by PL 1971, c. 620, § 5, is repealed.

Sec. 5. 26 MRSA § 1082, sub-§ 4, first sentence, as amended by PL 1971, c. 620, § 8, is further amended to read:

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. 26 MRSA § 1082, sub-§ 5, 2nd sentence is amended to read:

Such council shall meet no less than 4 times a year and shall aid the ~~commission~~ **Commissioner of Manpower Affairs** in formulating policies and discussing problems related to the administration of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems.

Sec. 7. 26 MRSA § 1194, sub-§ 3, 2nd sentence, as last amended by PL 1971, c. 418, is repealed and the following enacted in place thereof:

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 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 board of review by filing an appeal in accordance with such regulations as the 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. 8. 26 MRSA, § 1194, sub-§ 5 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 evi-

dence 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 effective date of this Act.

Sec. 9. 26 MRSA § 1194, sub-§§ 8 and 9, as amended, are repealed and the following enacted in place thereof:

8. Appeal to courts. Subject to subsection 11, 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 Act 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. 10. 26 MRSA § 1194, sub-§ 10, last ¶, first sentence is repealed and the following enacted in place thereof:

Subject to the same limitations and for the same reasons, the executive director may reconsider the determination in any case in which the final decision has been rendered by an appeal tribunal, the board of review or a court, and may apply to the body or court which rendered such final decision to issue a revised decision.

Sec. 11. 26 MRSA § 1221, sub-§ 10, ¶ E, first sentence, as last amended by PL 1971, c. 620, § 11, is further amended to read:

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. 12. 26 MRSA § 1401, as last amended by PL 1973, c. 537, § 30, is further amended by inserting after the first paragraph the following:

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.

Sec. 13. 26 MRSA § 1401, 2nd ¶, first sentence is repealed.

STATEMENT OF FACT

The purpose of this bill is to replace the Maine Employment Security Commission with an executive director to be appointed by the Commissioner of Manpower Affairs, except that appeals which were formerly presided over by the commission shall be held by a 3-member board of review to be appointed by the Commissioner of Manpower Affairs.