

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)

New Draft of: H. P. 202, L. D. 262
(New Title)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1206

H. P. 1163 House of Representatives, March 30, 1977
Reported by Mr. Wilfong from the Committee on Performance Audit, and
printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

**AN ACT to Require Periodic Justification of State Government Programs
and Independent Agencies.**

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

Sec. 1. 3 MRSA c. 23 is enacted to read:

CHAPTER 23

JUSTIFICATION OF STATE GOVERNMENT PROGRAMS

§ 501. Short title

This Act may be referred to as the "Maine Sunset Act."

§ 502. Purpose

The number and size of state departments and independent agencies have increased without sufficient legislative oversight and governmental accountability. The purpose of this Act is to establish a system for periodic justification of departments and agencies of State Government and for the termination of agencies which have outlived their purpose. The Act requires the Legislature to evaluate the need for and performance of present and future departments and agencies on a periodic basis.

§ 503. Definitions

As used in this chapter, unless the context requires otherwise, the following terms shall have the following meanings.

1. Department. "Department" means any of the organizations specified in section 507, subsections 1, 3, 5, 7 and 9, including any bureau, agency, office, commission or other body or official which is within or advisory to any of these organizations.

2. Independent agency. "Independent agency" means any bureau, agency, office, commission or other body or official of State Government which is listed in section 507, subsections 2, 4, 6, 8 and 10, or which is not, or is not part of, the Legislature, the judicial branch, a county, a municipality or a special district.

3. Regulatory function. "Regulatory function" means the function of:

A. Licensing or otherwise regulating initial entry into a profession, occupation, business, industry or other endeavor; or

B. Controlling or directing by regulation, on a continuing basis, the performance of a profession, occupation, business, industry or other endeavor.

4. Report. "Report" means any justification report prepared or submitted pursuant to the provisions of this Act.

§ 504. Justification reports

1. Report required. Each department and independent agency shall prepare and submit to the Legislature a justification report according to the schedule set forth in subsection 3. If, after submitting its first justification report, a department or independent agency has not been terminated by this Act or any other Act of the Legislature, it shall prepare and submit to the Legislature a justification report, pursuant to the provisions of this Act, at least once every 10 years.

2. Contents of justification reports. Each report shall include the following information, presented in as concise a manner as may be reasonably expected.

A. Each report shall include a description of each program and activity of and each advisory body to the department or independent agency, including references to authorizing legislation, organizational charts and a description of objectives.

B. Each report shall either account for or estimate the amount of, whichever is applicable, all moneys received or expected to be received, by source and all moneys disbursed or expected to be disbursed, by program, by the department or independent agency, for the fiscal year immediately preceding, the fiscal year of and the fiscal year immediately following the submittal of the report.

C. Each report shall include an identification and description of other government and private programs and activities having the same, similar or complementary objectives as the department or independent agency.

D. Each report shall include an analysis, quantified as much as possible, of the extent to which the objectives of the department or independent

agency have been reached. In addition, each report shall include a prospective analysis of how the department or independent agency plans to meet its objectives during the next 10 years.

3. Submittal of justification reports. Departments and independent agencies designated in section 507 shall submit their justification reports to the Legislature, through the Legislative Administrative Director, according to the following schedule: Group A, no later than October 31, 1978; Group B, no later than October 31, 1980; Group C, no later than October 31, 1982; Group D, no later than October 31, 1984; and Group E, no later than October 31, 1986.

§ 505. Analysis by the Department of Audit

The Department of Audit shall evaluate the justification reports prepared and submitted to the Legislature pursuant to section 504. In carrying out this evaluation, the department shall conduct the following analyses.

1. Objectives. For each department and independent agency which has submitted a justification report, the Department of Audit shall evaluate the analysis in the report and may conduct its own analysis of the extent to which the objectives of the department or independent agency have been reached.

2. Regulatory function; evaluation criteria. For each department, body of a department or independent agency which has a regulatory function and which has submitted or for which has been submitted a justification report, the Department of Audit shall conduct an analysis based on a consideration of the following criteria.

A. Would the absence of regulation significantly harm or endanger the public health, safety or welfare?

B. Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety or welfare?

C. Is there another less restrictive method of regulation available which could adequately protect the public?

D. Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and if so, to what degree?

E. Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

F. Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

3. Submittal of analyses. The State Auditor shall submit to the Legislature the evaluations and analyses carried out pursuant to this section, according to a schedule mutually agreed upon by the State Auditor and the Legislative Administrative Director. Any evaluation or analyses prepared pursuant to this section by the Department of Audit of the departments and independent agencies listed in section 507 shall be submitted to the Legislature according to the following schedule: Group A, no later than October 31, 1979;

Group B, no later than October 31, 1981; Group C, no later than October 31, 1983; Group D, no later than October 31, 1985; and Group E, no later than October 31, 1987.

§ 506. Termination of independent agencies

1. Termination. Unless continued or modified by law or unless otherwise provided under section 507, each independent agency shall terminate according to the schedule set forth in that section. Any independent agency not terminated according to that schedule, not exempted from the termination provisions under this chapter, or not terminated by any other Act of the Legislature shall be subject to the termination provisions of this Act at least once every 10 years.

2. Grace period. Each independent agency terminated under this chapter shall have a grace period, not to exceed one year from the date of its termination, in which to complete its duties. During the grace period, termination shall not reduce or otherwise limit the powers or authority of the agency.

3. Expiration of grace period. Upon the expiration of the grace period for any terminated independent agency, the following actions shall occur.

A. The agency shall cease all its activities.

B. The Legislature shall repeal or amend, as necessary, all laws related to the agency.

4. Disposition of property, funds and records. Prior to the expiration of the grace period for any terminated independent agency, the Legislature shall, by law, determine the disposition of:

A. All property, including any land, buildings, equipment and supplies used by the agency;

B. All funds remaining in any account of the agency; and

C. All records resulting from the activities of the agency.

§ 507. Justification and termination dates

For the following departments and independent agencies, the justification or termination schedule shall be as provided in this section.

1. Group A departments. The justification for the programs of the following Group A departments shall be reviewed by the Legislature no later than June 30, 1980:

A. Department of Transportation;

B. Department of Agriculture;

C. Department of Public Safety;

D. Department of Defense and Veterans Services; and

E. Department of the Secretary of State.

2. **Group A independent agencies.** Unless continued or modified by law, the following **Group A** independent agencies shall terminate, not including the grace period, no later than June 30, 1980. However, the **Maine Turnpike Authority**, the **Maine State Housing Authority** and the **Board of Emergency Municipal Finance** shall not terminate, but shall be reviewed by the Legislature no later than June 30, 1980:

- A. **Passenger Tramway Safety Board;**
- B. **Maine Turnpike Authority;**
- C. **Civil Air Patrol;**
- D. **Maine State Housing Authority;**
- E. **State Planning Office;**
- F. **Maine-Canadian Exchange Office;**
- G. **Board of Emergency Municipal Finance;**
- H. **Interstate Boundary Commission;**
- I. **State Lottery Commission; and**
- J. **Advisory Committee on Maine Public Broadcasting.**

3. **Group B departments.** The justification for the programs of the following **Group B** departments shall be reviewed by the Legislature no later than June 30, 1982:

- A. **Department of Business Regulation; and**
- B. **Department of the Attorney General.**

4. **Group B independent agencies.** Unless continued or modified by law, the following **Group B** independent agencies shall terminate, not including a grace period, no later than June 30, 1982:

- A. **State Board of Registration for Professional Foresters;**
- B. **Board of Accountancy;**
- C. **Arborist Examining Board;**
- D. **Maine State Board for Registration of Architects;**
- E. **Board of Examiners for the Examination of Applicants for Admission to the Bar;**
- F. **State Board of Barbers;**
- G. **Board of Chiropractic Examination and Registration;**
- H. **State Board of Cosmetology;**
- I. **Board of Dental Examiners;**
- J. **State Board of Registration for Professional Engineers;**

- K. State Board of Funeral Service;
- L. State Board of Registration for Land Surveyors;
- M. Board of Licensure of Administrators of Medical Care Facilities other than Hospitals;
- N. Board of Registration in Medicine;
- O. State Board of Nursing;
- P. State Board of Optometry;
- Q. Board of Osteopathic Examination and Registration;
- R. Penobscot Bay and River Pilotage Commission;
- S. Board of Commissioners of the Profession of Pharmacy;
- T. Board of Examiners in Physical Therapy;
- U. Plumbers' Examining Board;
- V. Examiners of Podiatrists; and
- W. State Board of Social Worker Registration.

5. Group C departments. The justification for the programs of the following Group C departments shall be reviewed by the Legislature no later than June 30, 1984:

- A. Department of Conservation;
- B. Department of Inland Fisheries and Wildlife;
- C. Department of Environmental Protection;
- D. Department of Marine Resources; and
- E. Department of Manpower Affairs.

6. Group C independent agencies. Unless continued or modified by law, the following Group C independent agencies shall terminate, not including a grace period, no later than June 30, 1984. However, the Maine Guarantee Authority, the Maine Municipal Bond Bank and the Mountain Resorts Airport Authority shall not terminate, but shall be reviewed by the Legislature no later than June 30, 1984:

- A. Baxter State Park Authority;
- B. Forestry Appeals Board;
- C. Coastal Island Trust Commission;
- D. Saco River Corridor Commission;
- E. Soil and Water Conservation Commission;
- F. Inspector of Dams and Reservoirs;

- G. Maine Sardine Council ;
- H. Public Utilities Commission ;
- I. State Development Office ;
- J. Maine Guarantee Authority ;
- K. Maine Municipal Bond Bank ;
- L. Mountain Resorts Airport Authority ;
- M. Office of Energy Resources ; and
- N. Office of CETA Planning and Coordination.

7. Group D departments. The justification for the programs of the following Group D departments shall be reviewed by the Legislature no later than June 30, 1986:

- A. Department of Human Services ;
- B. Department of Indian Affairs ; and
- C. Department of Mental Health and Corrections.

8. Group D independent agencies. Unless continued or modified by law, the following Group D independent agencies shall terminate, not including a grace period, no later than June 30, 1986. However, the Maine Health Facilities Authority shall not terminate, but shall be reviewed by the Legislature no later than June 30, 1986:

- A. Maine Health Facilities Authority ;
- B. Health Facilities Advisory Council ;
- C. Maine Medical Laboratory Commission ;
- D. Board of Trustees, Group Accident and Sickness or Health Insurance ;
- E. District Health Officers ;
- F. Board of Sanitation, Licensing and Inspection ;
- G. State Planning and Advisory Council on Developmental Disabilities ;
- H. Board of Visitors (to the state institutions) ;
- I. Maine Committee on Problems of the Mentally Retarded ;
- J. Industrial Accident Commission ;
- K. Governor's Committee on Employment of the Handicapped ;
- L. Division of Community Services ;
- M. Maine Criminal Justice Planning and Assistance Agency ;
- N. Governor's Committee on the Status of Women ; and

O. Maine Human Rights Commission.

9. Group E departments. The justification for the programs of the following Group E departments shall be reviewed by the Legislature no later than June 30, 1988:

- A. Department of Finance and Administration;
- B. Department of the Treasurer of State;
- C. Department of Audit;
- D. Department of Personnel;
- E. Department of Educational and Cultural Services;
- F. Maine State Retirement System;
- G. Board of Trustees of the University of Maine; and
- H. Board of Trustees of the Maine Maritime Academy.

10. Group E independent agencies. Unless continued or modified by law, the following Group E independent agencies shall terminate, not including the grace period, no later than June 30, 1988:

- A. Office of State Employee Relations;
- B. State Employees Appeals Board;
- C. Municipal Valuation Appeals Board;
- D. Educational Leave Advisory Board;
- E. Maine Vocational Development Commission;
- F. Post-secondary Education Commission of Maine;
- G. State Government Internship Program Advisory Committee;
- H. State Historian;
- I. Maine Labor Relations Board;
- J. State Liquor Commission; and
- K. Capitol Planning Commission.

§ 508. Future or reorganized departments and independent agencies

The Legislature shall establish schedules for the submittal of periodic justification reports by departments and independent agencies created or substantially reorganized after the effective date of this chapter and for the termination of independent agencies created or substantially reorganized after the effective date of this chapter. All such departments or independent agencies shall be subject to the provisions of this chapter.

§ 509. Legislative Council

The Legislative Council shall be responsible for and shall, subject to the approval of the Legislature, issue rules necessary for the efficient administration of this chapter.

§ 510. Legal claims

Termination, modification or establishment of departments or independent agencies as a result of the review required by this chapter shall not extinguish any legal claims against the State, any state employee or state department or independent agency. Specifically, the provisions of this chapter shall not relieve the State or any department or independent agency of responsibility for making timely payment of the principal and interest of any debt issued in the form of a bond or a note.

§ 511. Review

The Legislature shall review the provisions and effects of this chapter by no later than June 30, 1989, and at least once every 10 years thereafter.

Sec. 2. Implementation. The Legislative Council, subject to the approval of the Legislature, shall determine the manner in which this chapter is to be implemented. Prior to May 1, 1978, the Legislature shall:

1. **Procedures.** Establish the procedures to be used for the legislative review of reports;

2. **Format.** Design a format to be used by departments and independent agencies in the preparation of the justification reports and a simplified format to be used by departments and independent agencies which have been subject to major review by the Legislature during the 2 years immediately preceding the pertinent dates set forth in section 507;

3. **Responsibilities.** Define the respective responsibilities of the Joint Standing Committee on Performance Audit and other joint standing committees of the Legislature, the Legislative Finance Office and other legislative agencies and personnel and the Department of Audit for carrying out the purposes of this chapter;

4. **Costs.** Determine the costs involved in carrying out the purposes of this chapter;

5. **Employees.** Make recommendations concerning the status of classified and unclassified employees whose jobs could be terminated as a result of the provisions of this chapter;

6. **Other laws.** Study the effects of any other processes of periodic review of state government programs or regulations passed by the 108th Legislature and, if necessary, recommend statutory changes to bring the schedules of the different processes in line with one another; and

7. **Other agencies.** Determine whether additional existing governmental bodies should be added to any of the groups in section 507.

Sec. 3. Appropriation. There is appropriated from the General Fund to the Department of Audit the sum of \$32,600 for fiscal year 1978-79 to carry out the purposes of Title 3, section 505. The breakdown shall be as follows:

1978-79

AUDIT, DEPARTMENT OF

Personal Services	(2) \$25,100
All Other	5,000
Capital Expenditures	2,500

The Department of Audit is authorized to fund a Legislative Auditor II and a Legislative Auditor III for fiscal year 1978-79.

STATEMENT OF FACT

1. Justification and termination. The primary purpose of this bill is to initiate 2 new processes; the review and justification of state departments and independent agencies, section 504, and the termination of independent agencies which have outlived their purpose, section 506.

It should be noted that the thrust of this bill is toward the periodic evaluation of the performance of State Government. The termination provisions are intended to serve as a mechanism for forcing such evaluation.

2. Justification reports. This bill requires that each department and independent agency listed in section 507 submit a justification report to the Legislature once every 10 years. Section 504 specifies that these reports are to be as concise as possible and are to include the following information: A description of programs and objectives; a financial statement covering a 3-year period; a description of other government programs having similar objectives; and a quantified analysis of the extent to which objectives have been reached.

3. Analyses. Section 505 of the bill provides that the Department of Audit must evaluate the justification reports prepared by departments and independent agencies. In addition, the department is required to consider 6 evaluation criteria when it reviews the regulatory aspects of departments and independent agencies.

4. Terminated agencies. Section 506 of this bill provides that independent agencies shall be subject to termination provisions once every 10 years. This section also provides that there will be a one-year grace period for any agency which has been terminated, during which period the agency will maintain all of its powers. Under this section, the Legislature is required to determine what happens to the underlying laws, the property, the funds and the records of a terminated agency.

5. Implementation. Section 2 of the bill requires the Legislature to work out the details of implementing the Act. Prior to May 1, 1978, the Legislative Council, subject to approval by the Legislature, must: Establish procedures for the legislative review of the justification reports; design a format for the justification reports; define the respective responsibilities of the Committee on Performance Audit, the other joint standing committees of the Legislature

and the Department of Audit; determine the costs involved in carrying out the chapter; make recommendations about employees whose jobs are terminated as a result of this chapter; study the relationship between other "sunset" laws passed by the 108th Legislature and this chapter; and determine whether other existing independent agencies should be subject to the provisions of this chapter.

6. Other provisions. The bill also contains provisions which: Require the Legislature to establish schedules for submitting justification reports to and for the termination of future departments and independent agencies; authorize the Legislative Council to issue rules, subject to approval by the Legislature, necessary for the efficient implementation of the chapter; prevent legal claims against the State from being extinguished as a result of the chapter; and subject the chapter to a review at least once every 10 years.

7. Fiscal impact. This chapter will cost nothing during fiscal year 1977-78. However, as indicated in section 3 of the bill, the cost to the State during 1978-79 will be \$32,600.

This appropriation will be used to fund 2 new positions in the Department of Audit: A Legislative Auditor II and a Legislative Auditor III. These new staff members will be responsible for reviewing and evaluating the justification reports submitted by the various departments and state agencies. Because the first justification reports are not due until October 31, 1978, the Department of Audit will have 4 months with its 2 new staff members for gearing up before it must begin to review these reports.