

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2164

H. P. 2137

House of Representatives, February 24, 1978

Governor's Bill. Referred to Committee on State Government. Sent up for concurrence.

Presented by Mr. Quinn of Gorham.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

**AN ACT Providing the Governor with the Procedure for Reorganizing a
Department or Agency of State Government.**

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

5 MRSA Pt. 19 is enacted to read:

PART 19

EXECUTIVE REORGANIZATION

CHAPTER 385

EXECUTIVE REORGANIZATION ACT OF 1978

§ 11501. Short title

This chapter shall be known and may be cited as the "Executive Reorganization Act of 1978."

§ 11502. Legislative declaration

The Legislature declares that the public interest demands the carrying out of the purposes of section 11504 and that these purposes may be accomplished in a

great measure by proceeding under this chapter. The Legislature further declares that it shall be the policy of the State to carry out the purposes of section 11504.

§ 11503. Definitions

For the purposes of this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Agency.** “Agency” means a state department, office, agency, board, commission, bureau, division or part thereof, within the Executive Department.

2. **Executive Department.** “Executive Department” means the separate branch of State Government as divided under the Constitution, Article III, section 1, distribution of powers.

3. **Reorganization.** “Reorganization” means a transfer, consolidation, coordination, authorization, establishment or abolition.

§ 11504. Determinations by Governor

The Governor, as Chief Administrative Officer of the State, shall from time to time examine the organization of all departments and agencies and shall determine what changes are necessary to accomplish the following purposes:

1. **Administration.** To promote the better execution of the laws, the more effective management of the Executive Department and of its departments, agencies and functions and the expeditious administration of the public business;

2. **Economy.** To reduce expenditures and promote economy to the fullest extent consistent with the operation of the Executive Department;

3. **Efficiency.** To increase the efficiency of the Executive Department to the fullest extent practicable;

4. **Coordination and consolidation.** To group, coordinate and consolidate agencies and programs of the executive, as nearly as may be, according to major purposes and related functions;

5. **Simplification.** To reduce the number of agencies by consolidating those having similar functions under a single head, thus providing for simplification of the Executive Department; and

6. **Elimination of duplication.** To eliminate overlapping and duplication of effort.

§ 11505. Reorganization plans

1. **Plan.** Whenever the Governor, after review of the organization and staffing of any state agency or agencies, finds that changes in the organization and staffing of an agency or agencies are necessary to carry out any policy set forth in section

11504, he shall direct affected agencies to assist the Commissioner of Finance and Administration, the State Budget officer, the Director of the State Planning Office and the Commissioner of Personnel in preparation of a reorganization plan specifying the reorganizations that are necessary. That plan may provide for:

- A. The transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of an existing or proposed agency;
- B. The consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another existing or proposed agency or the functions thereof;
- C. The consolidation or coordination of a part of an agency or the functions thereof with another part of the same agency or the functions thereof;
- D. The authorization of an officer to delegate any of his functions;
- E. The abolition of the whole or a part of an agency, which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions;
- F. A standard nomenclature for state agencies and agency administrations; or
- G. Changes in the appointment authority for an agency or its subdivisions.

2. Citizen participation. Before presenting a plan of reorganization, the Governor shall provide appropriate means for broad citizen advice and participation in restructuring and reorganizing the Executive Department.

3. Delivery of plan to Legislature. The Governor shall deliver a reorganization plan or plans to both the House of Representatives and Senate on a day the Legislature is in session.

4. Modification of plan. Anytime during the period of 45 calendar days of continuous legislative session after the date of transmittal to both Houses, but before the legislation described in section 11508, subsection 1, is enacted, the Governor may make amendments to or modify the plan and the changes shall be considered as part of the original reorganization submission.

§ 11506. Specific contents of reorganization plan

1. Name change. A reorganization plan transmitted by the Governor under section 11505 may change the name of an agency affected by a reorganization and the title of its head and shall designate the name of an agency resulting from a reorganization and the title of its head.

2. Appointment. The plan may provide for the appointment of the head of any

agency, including an agency established from a consolidation or other type of reorganization, if the plan declares that the provisions are necessary. In the case of an appointment of the head of such an agency, the term of office shall be coterminous with that of the Governor; the pay shall be at a rate comparable to the designated schedule for officers in the Executive Department under Title 2, sections 6 and 7. Appointment of the head shall be by the Governor with confirmation by the Legislature, as provided for in the Constitution, Part First, Article V, Section 8.

3. **Transfer or disposition.** The plan shall provide for the transfer or other disposition of the records, property and personnel affected by a reorganization.

4. **Funds.** The plan shall provide if necessary for the transfer of any unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, for the use of the agency which shall have the functions after the reorganization plan is effective. Any reorganization plan transmitted by the Governor shall provide for the transfer of unexpended balances only if the balances are used for the purposes for which the appropriation was originally made.

5. **Statutory authority.** The reorganization plan shall specify the statutory authority for the exercise of any affected organization or function.

6. **Expenditure and personnel reduction or reallocation.** The plan shall also estimate any reduction or reallocation of expenditures and personnel, itemized so far as practicable; contain a schedule for implementation; and describe any improvements in management, delivery of state services, execution of the laws and increases in efficiency of government operations, which it is expected will be realized as a result of the reorganizations included in the plan.

7. **Termination of affairs.** The plan shall provide for terminating the affairs of any abolished agency.

8. **Parts of plan.** The reorganization plan shall be divided into 2 parts.

A. The first part shall provide a narrative description of the proposed reorganization.

B. The 2nd part shall indicate the statutory changes necessary to implement the reorganization proposal. Only this 2nd part shall need legislative approval and only the 2nd part shall be published as state law as indicated in section 11508, subsection 2.

§ 11507. Limitation on powers

A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of:

1. **Statutory termination of agency. Continuing an agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made;**
2. **Statutory termination of function. Continuing a function beyond the period authorized by law for its exercise or beyond the time when it would have terminated if the reorganization had not been made;**
3. **Program not authorized. Authorizing an agency to exercise a program which is not authorized by law at the time the plan is transmitted to the Legislature; or**
4. **Increase in personnel or appropriations not authorized. Increasing personnel or appropriations for the reorganized activities over that previously authorized by the Legislature.**
5. **Affecting constitutional authority; statutory functions. Affecting constitutional authority of the Governor, the Attorney General, the Treasurer of State or the Secretary of State. Functions assigned by statute may be subject to a reorganization plan.**

§ 11508. Effective date and publication of reorganization plans

1. **Authorization of plan. A reorganization plan shall be authorized at the end of a period of 60 calendar days after the date on which the plan is transmitted to the Senate and House of Representatives on a day on which both Houses are meeting in the course of a regular or special session; provided, between the date of transmittal and the end of the 60-day period, the Legislature passed an Act containing the reorganization plan in accordance with the Constitution, Part Third, Article IV, Section 2.**

2. **Approved plan to have force of law; publication. A reorganization plan which is approved in the manner provided by subsection 1 shall have the force and effect of law. The Legislature shall cause the necessary statutory changes as included in the plan to be printed and published in the next edition of the Laws of Maine.**

§ 11509. Appropriations

The appropriations or portions of appropriations unexpended by reason of the operation of this chapter shall lapse to unappropriated surplus.

§ 11510. Effect of Act on rights acquired under Personnel Law or retirement system

Nothing in this chapter shall be construed to deprive any person of any tenure rights or of any right or protection provided him by law, the rules of the Department of Personnel, the pension law and the retirement system.

§ 11511. Effect of Act on prior orders, rules and regulations

This chapter shall not affect any order, rule or regulation made or promulgated prior to the effective date of a reorganization plan by any department, commission, council, board, authority, officer or other agency, the functions, powers and duties of which have been assigned or transferred to any other officer, authority or agency pursuant to a reorganization plan; but these orders, rules and regulations shall continue with full force and effect until amended or repealed pursuant to law.

§ 11512. Effect of Act on actions or proceedings

This chapter shall not affect actions or proceedings, civil or criminal, brought by or against any department, commission, council, board, authority, officer or other agency, the functions, powers and duties of which have been transferred or abolished pursuant to this chapter, nor shall any reorganization effect any order or recommendation made by, or other matters or proceedings before, any department, commissions, council, board, officer, authority or agency, the functions, powers and duties of which have been transferred or abolished pursuant to a reorganization plan under this chapter.

STATEMENT OF FACT

The purpose of this legislation is to establish a procedure whereby a Governor, as Chief Administrator of State Government, may initiate and submit a reorganization plan to the Legislature detailing the changes necessary for the efficient operation of the Executive Department. This legislation exempts the constitutional authority of the Governor, the Attorney General, Secretary of State and the Treasurer of State. This bill contains what may and may not be included in such a reorganization plan and provides for the orderly transition of an agency or agencies once the plan for reorganization takes effect.

The reorganization plan shall be delivered to the House and the Senate during a legislative session and shall specify the statutory authority for the exercise of any affected organization or function; estimate any reduction or reallocation or expenditures and personnel, itemized so far as practicable; contain a schedule for implementation; and describe any improvements in management, delivery of state services, execution of the laws, and increases in efficiency of government operations which is expected to be realized as a result of the reorganization.

A reorganization plan shall be authorized at the end of 60 calendar days by the passage of An Act containing the reorganization plan.

This approach, adopted by 22 other states, was modeled after legislation passed by Congress and has been recommended by the Advisory Commission on

Intergovernmental Relations and the Council of State Governments as a more efficient way for a Governor to manage the Executive Branch of government while safeguarding legislative authority by requiring approval by the Legislature and preventing any reorganization that would create a function not previously authorized.