

MAINE STATE LEGISLATURE

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(Governor's Bill)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 609

S. P. 222

In Senate, February 4, 1981

Referred to the Committee on Business Legislation. Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary of the Senate

Presented by Senator Clark of Cumberland.

Cosponsors: Representative Perkins of Brooksville, Representative Fitzgerald of Waterville and Senator C. Sewall of Lincoln.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Reorganize the Department of Business Regulation to Insure the Independence of Regulators.

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

Sec. 1. 2 MRSA § 6, sub-§ 7, as last amended by PL 1979, c. 732, § 3, is further amended to read:

7. Range 83. The salaries of the following state officials and employees shall be within salary range 83:

Deputy Adjutant General;

Secretary of Public Utilities Commission;

Chief Boiler Inspector and Supervising Elevator Inspector;

Dispute Resolution Specialist;

Director of the Real Estate Commission.

Sec. 2. 5 MRSA § 711, sub-§ 2, ¶ A, sub-¶ (2), as repealed and replaced by PL 1977, c. 674, § 6, is amended to read:

(2) Department of Business Regulations:

- (a) Superintendent, Bureau of ~~Banks and~~ Banking;
- (b) Superintendent, Bureau of Consumer Protection; **and**
- (c) Superintendent, Bureau of Insurance; ~~and.~~
- ~~(d) Director of Real Estate~~

Sec. 3. 9-A MRSA § 6-103, as amended by PL 1975, c. 771, § 109, is further amended to read:

§ 6-103. Administration

There is created and established the Bureau of Consumer Protection within the Department of Business Regulation. 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 with the advice and consent of the~~ Governor and subject to review by the Joint Standing Committee on Business Legislation and to confirmation by the Legislature ~~and shall report directly to the Commissioner of the Department of Business Regulation.~~ He shall be appointed for a term of 5 years or until a successor is appointed and qualified ~~and he.~~ **Any vacancy occurring shall be filled by appointment for the unexpired portion of the term. He** may be removed from office for cause by impeachment or by the Governor on the address of both branches of the Legislature **and Title 5, paragraph B, section 711, shall not apply.** No person shall be eligible for said office unless he shall have been a resident of the State of Maine for at least 2 years. During his term of office the administrator shall engage in no other business or profession.

Sec. 4. 9-B MRSA § 211, sub-§ 1, as last amended by PL 1979, c. 663, § 29, is further amended to read:

1. Appointment; term; qualifications. The activities of the bureau shall be directed by a superintendent who shall be appointed by the ~~Commissioner of Business Regulation with the advice and consent of the~~ Governor and subject to review by the Joint Standing Committee on Business Legislation and to confirmation by the Legislature. The superintendent shall hold office for a term of 5 years, or until his successor is appointed and qualified ~~→. provided that the~~ **The** superintendent may be removed from office for cause by impeachment or by the Governor on the address of both branches of the Legislature, **and Title 5, section 711, paragraph B, shall not apply.** Any person appointed as superintendent shall have the knowledge of, or experience in, the theory and practice of banking.

Sec. 5. 10 MRSA § 8002, as last amended by PL 1977, c. 564, § 49, is further amended to read:

§ 8002. Duties and authority of commissioner

The administrative head of the department shall be the Commissioner of

Business Regulation, who shall be appointed by the Governor, subject to review by the Joint Standing Committee on Business Legislation and to confirmation by the Legislature, and who shall serve during the pleasure of the Governor. As chief administrative officer of the department, the commissioner shall have the following duties and authority:

1. **Budget.** Prepare the budget for the department except that the commissioner may not levy against revenues of the Bureaus of Banking, Insurance and Consumer Protection in excess of 10% of their budget for any lawful purpose other than as provided in section 8003, subsection 6, unless the superintendent concerned shall agree;

2. **Personnel.** Transfer personnel within the department to insure efficient utilization of department personnel;

3. **Purchases.** Coordinate the purchase and use of all equipment within the department;

4. **Review.** Review the functions and operation of bureaus, boards and commissions within the department to assure that overlapping functions and operations are eliminated and that each complies fully with its statutory and public service responsibilities; and

5. **Liaison.** Act as a liaison between the bureaus, boards and commissions within the department and the Governor;

6. **Establishment of fees.** Notwithstanding any other provision of law, to establish, in accordance with Title 5, section 8052, application and examination fees and fees to be paid for biennial licenses for bureaus, boards and commissions, subject to a biennial limit of \$100, except for licenses issued by the Bureau of Insurance, Bureau of Consumer Protection and for itinerant photographers, money order dealers, home repair contractors and home repair financing agencies; and

7. **Establishment of per diem allowances.** Notwithstanding any other provision of law, to establish, in accordance with Title 5, section 8052, per diem allowances to be paid to members of boards and commissions who are not state employees, with the advice of the respective boards and commissions, subject to a per diem limit of \$50, except for members of the State Claims Boards; and this authority shall extend to boards and commissions for which no per diem allowance has previously been authorized.

The commissioner shall not have the authority to exercise or interfere with the exercise of discretionary regulatory or licensing authority granted by statute to the bureaus, boards or commissions within the department set forth in section 8001.

Sec. 6. 10 MRSA § 8003, sub-§ 2, as amended by PL 1977, c. 273, § 1, is further amended to read:

2. **Function of division.** It shall be the responsibility of the licensing division

to process and issue certificates of registration or reregistration for those individuals and bureaus, boards and commissions within the department which the commissioner shall direct. Such certificates of registration or reregistration shall be processed and issued by the licensing division only upon authorization of the appropriate bureau, board or commission or commissioner in the case of individuals. The licensing division shall maintain for the Department of Business Regulation a central register containing the name and address of each firm or person licensed by profession, occupation or industry and other such information as the commissioner shall direct for administrative, information or planning purposes and shall be open for public inspection during regular office hours. The commissioner, with the advice of the respective bureaus, boards and commissions, or as provided by statute in the case of individuals, shall have the authority to determine the type and form of the information collected for licensing purposes **and, notwithstanding any other provision of law, shall have the authority to determine the formats of certificates and licenses**, in order to facilitate processing by the licensing division. The licensing division shall perform such other administrative services for the bureaus, boards and commissions within the department as the commissioner shall direct.

Sec. 7. 24-A MRSA § 201, sub-§ 2, as amended by PL 1975, c. 771, § 259, is further amended to read:

2. The superintendent shall be appointed by the ~~Commissioner of the Department of Business Regulation with the advice and consent of the~~ Governor and subject to review by the Joint Standing Committee on Business Legislation and to confirmation by the Legislature.

Sec. 8. 24-A MRSA § 201, sub-§ 3, as repealed and replaced by PL 1973, c. 585, § 7, is amended to read:

3. The superintendent shall hold his office for 5 years or until his successor has been appointed and has qualified. **Any vacancy occurring shall be filled by appointment for the unexpired portion of the term.**

Sec. 9. 24-A MRSA § 201, sub-§ 4 is enacted to read:

4. **The superintendent shall be removable for cause by impeachment or by address of the Governor to both branches of the Legislature, and Title 5, section 711, paragraph B, shall not apply.**

Sec. 10. 32 MRSA § 4051-A, 4th ¶, as amended by PL 1977, c. 674, § 27, is amended to read:

The Commissioner of Business Regulation, with the advice ~~and consent of a majority of the Real Estate Commission~~, shall appoint a Director of the Real Estate Commission ~~whose term of office shall be continuous, subject only to removal by a majority of the commission and the Commissioner of Business Regulation subject to Personnel Law. The salary of the director shall be fixed by the Commissioner of Business Regulation with the advice and consent of a majority of the Real Estate Commission~~. The director shall be responsible for the

management of the commission's affairs within the guidelines, policies, rules and regulations established by the commission. ~~With the approval of the Commissioner of Business Regulation and subject to the Personnel Law, the commission may employ such clerical assistants, technical assistants and investigators as it deems necessary~~

Sec. 11. 32 MRSA § 4053-A is enacted to read:

§ 4053-A. Employees

The director may employ a deputy and such clerical assistants, technical assistants and investigators as deemed necessary to discharge the duties imposed by this chapter and shall outline their duties and fix their compensation, subject to the Personnel Law.

Sec. 12. 32 MRSA § 4056, sub-§ 1, first ¶, as repealed and replaced by PL 1977, c. 365, is amended to read:

1. **Investigations.** The director may in his discretion and shall, upon order of the commission or upon receipt of a verified written complaint, investigate the actions of any real estate broker, real estate salesman or any person who shall assume to act in either capacity. Upon completion of the investigation, the director shall report his findings, **which may include conclusions and recommendations**, to the commission. **The director shall not participate in commission deliberations or vote in disposition of complaints made pursuant to this subsection.** The commission shall consider the findings, **conclusions and recommendations of the investigation and may convene a hearing** to assist it in determining whether a violation of this chapter has occurred.

Sec. 13. **Transition provisions.** Notwithstanding any other provision of law, the terms of the Superintendent of Banking, the Superintendent of Insurance and the Superintendent of Consumer Protection shall expire on June 1, 1984. On or before that date, the Governor shall determine by lot the transitional terms of office of each of these officials: The transitional term of one of them shall be for 5 years, the transitional term of another of them shall be for 4 years and the transitional term for one of them shall be for 3 years. Following the completion of these transitional terms, the term of office shall be as otherwise prescribed by law.

STATEMENT OF FACT

Section 1 establishes the salary of the Director of the Real Estate Commission.

Section 2 removes the Director of the Real Estate Commission from unclassified service.

Section 3 removes the Superintendent of Consumer Protection from appointment by the Commissioner of Business Regulation and transfers that appointment to the Governor. Removal procedures for the Superintendent of

Consumer Protection are clarified. To insure a degree of regulatory independence, the term of superintendent is set for 5 years.

Section 4 removes the Superintendent of Banking from appointment by the Commissioner of Business Regulation and transfers that power to the Governor. Removal procedures for the Superintendent of Banking are clarified. To insure a degree of regulatory independence, the term of the superintendent is set for 5 years.

Section 5 provides:

A. The commissioner may not use funds of the Bureaus of Banking, Insurance and Consumer Protection for the provisions of central, administrative and legal services at a cost any greater than 10% of their budgets without their consent. This provision is intended to safeguard the bureaus from interference in regulatory activities through budgetary control;

B. This section also would authorize the commissioner to set licensing fees, subject to a biennial ceiling of \$100, except for those licenses which are already subject to higher fees. The ultimate purpose is to allow equal charges for equal costs for licensing instead of the current haphazard pattern of fees. The principle of setting license fees subject to a ceiling is patterned on authority already granted to some licensing boards. The fees could only be set in accordance with the Maine Administrative Procedure Act. The centralized fee-setting authority would provide for appropriate uniformity; and

C. Similarly, the commissioner would be authorized to establish per diem allowances for members of boards and commissions who are not state employees subject to a daily limit of \$50. This would enable the department to provide equal pay for equal work and to provide that there would be no discrimination against professionals in certain areas as compared with others.

Section 6 would give the commissioner the authority to determine the format of certificates and licenses. Current law provides for a considerable variety of forms which is a way to realize economics of scale through the Central Licensing Division. For those professions which desired specific formats, the commissioner could, under this provision, allow optional arrangements at the expense of licenses.

Section 7 removes the Superintendent of Insurance from appointment by the Commissioner of Business Regulation and transfers that power to the Governor.

Section 8 is designed to insure the Superintendent of Insurance a degree of regulatory independence by setting the term at 5 years.

Section 9 clarifies removal procedures and makes them standard with those of other superintendents.

Section 10 eliminates the unique process for appointment and removal of the Director of the Real Estate Commission. The substitute language provides for

appointment of the director, subject to the Personnel Law, by the Commissioner of the Department of Business Regulation, with advice of the Real Estate Commission.

Section 11 authorizes the Director of the Real Estate Commission to employ staff assistants. This change better reflects the actual practice.

Section 12 prohibits the director from participating in commission deliberations and voting in situations where a potential for unfairness exists, or appears to exist, as a result of his role in investigation of complaints.

Section 13 staggers the terms of the Superintendent of Banking, Insurance and Consumer Protection so that no more than one of them would be appointed by the Governor in any year. The transitional provision allows for the appointment of these officials for terms of varying lengths so as to create staggered terms. Following these transitional terms, the normal 5-year terms will apply.