

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1882

6
7 H.P. 1437

House of Representatives, January 10, 1984

8 Approved for introduction by the Legislative Council pursuant to Joint
9 Rule 26.

10 Reference to the Committee on Public Utilities is suggested and ordered
printed.

EDWIN H. PERT, Clerk

Presented by Representative Vose of Eastport.

11 Cosponsor: Representative Paradis of Old Town.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FOUR
16

17 AN ACT to Create the Independent Office
18 of Hearing Examiners.
19

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

22 Sec. 1. 2 MRSA §6, sub-§3, as repealed and re-
23 placed by PL 1981, c. 705, Pt. L, §§1 - 3, is amended
24 to read:

25 3. Range 89. The salaries of the following
26 state officials and employees shall be within salary
27 range 89:

28 State Director of Public Improvements;

29 State Budget Officer;

30 State Controller;

31 Director of the Bureau of Forestry;

1 Chief of the State Police;
2 Director, State Planning Office;
3 Director, Energy Resources Office;
4 Public Advocate; and
5 Commissioner of Defense and Veterans' Services;
6 and
7 Chief Hearing Examiner.

8 Sec. 2. 5 MRSA §9055, as amended by PL 1979, c.
9 425, §11, is repealed and the following enacted in
10 its place:

11 §9055. Ex parte communications; separation of func-
12 tions

13 1. Communication prohibited. In any adjudicatory
14 proceeding, no agency members authorized to take
15 final action or presiding officers designated by ei-
16 ther the Chief Hearing Examiner of the Office of
17 Hearing Examiners or by the agency to make findings
18 of fact and conclusions of law may communicate di-
19 rectly or indirectly in connection with any issue of
20 fact, law or procedure, with any party or other per-
21 son legally interested in the outcome of the proceed-
22 ing, except upon notice and opportunity for all par-
23 ties to participate.

24 2. Communication permitted. This section does
25 not prohibit any agency member described in subsec-
26 tion 1 from:

27 A. Communicating in any respect with other mem-
28 bers of the agency, provided that member, staff,
29 counsel or consultant has not participated and
30 will not participate in the adjudicatory proceed-
31 ing in an advocate capacity; or

32 B. Having the aid or advice of those members of
33 his own agency staff, counsel or consultants re-
34 tained by the agency, provided that member,
35 staff, counsel or consultant has not participated
36 and will not participate in the adjudicatory pro-
37 ceeding in an advocate capacity.

1 Sec. 3. 5 MRSA §9062, sub-§1, as enacted by PL
2 1977, c. 551, §3, is amended to read:

3 1. Presiding officer. An Unless hearings before
4 an agency are required by law to be conducted by an
5 examiner from the Office of Hearing Examiners, an
6 agency may authorize any agency member, employee or
7 agent to act as presiding officer in any hearing.

8 Sec. 4. 5 MRSA c. 375, sub-c. IV-A is enacted to
9 read:

10 SUBCHAPTER IV-A

11 HEARING EXAMINERS

12 §9070. Office of Hearing Examiners

13 1. Creation. An Office of Hearing Examiners is
14 created. The office shall be under the direction of a
15 Chief Hearing Examiner, who shall be authorized to
16 practice before the Supreme Judicial Court and ap-
17 pointed by the Governor for a term of 6 years. Sub-
18 ject to the Personnel Law, the Chief Hearing Examiner
19 shall appoint additional hearing examiners to serve
20 in his office as necessary to fulfill the duties pre-
21 scribed in this section. All hearing examiners shall
22 be authorized to practice before the Supreme Judicial
23 Court, shall have demonstrated knowledge of adminis-
24 trative procedures and shall be free of any political
25 or economic association that would impair their abil-
26 ity to function officially in a fair and objective
27 manner.

28 2. Salaries; compensation. Except for the Chief
29 Hearing Examiner, the salaries and compensation of
30 hearing examiners and other personnel of the Office
31 of Hearing Examiners shall be subject to the Person-
32 nel Law.

33 3. Temporary hearing examiners. When regularly
34 appointed hearing examiners are not available, the
35 Chief Hearing Examiner may contract with qualified
36 individuals to serve as hearing examiners for specif-
37 ic assignments. These temporary hearing examiners
38 shall possess the same qualifications as salaried
39 hearing examiners, shall not be employees of the

1 State and shall be remunerated for their services at
2 a rate not to exceed \$250 per day.

3 4. Hearings. All hearings of state agencies re-
4 quired to be conducted under this chapter shall be
5 conducted by a hearing examiner assigned by the Chief
6 Hearing Examiner. In assigning hearing examiners to
7 conduct these hearings, the Chief Hearing Examiner
8 shall attempt to utilize personnel having expertise
9 in the subject to be dealt with in the hearing. As a
10 presiding officer, the hearing examiner may adminis-
11 ter oaths and affirmations; rule on the admissibility
12 of evidence; regulate the course of the hearing; set
13 the time and place for continued hearings; fix the
14 time for filing of evidence, briefs and other written
15 submissions; examine witnesses; and rule on motions
16 or petitions made pursuant to the Maine Rules of Civ-
17 il Procedure or the procedural rules for adjudicatory
18 proceedings adopted by the Chief Hearing Examiner,
19 provided that rulings on motions to dismiss, motions
20 for summary judgment or contested petitions to inter-
21 vene shall be made in the form of recommendations to
22 the commission in a hearing examiner's report. It is
23 the duty of the hearing examiner to:

24 A. Advise an agency as to the location at which,
25 and time during which, a hearing should be held
26 so as to allow for the giving by such agency of
27 the notice thereof as may be required by law and
28 to allow participation by all affected interests;

29 B. Conduct only hearings for which proper notice
30 has been given pursuant to section 9052 or other
31 applicable law;

32 C. See to it that all hearings are conducted in
33 an expeditious, fair and impartial manner; and

34 D. Make a report on each proposed agency action
35 in which the hearing examiner functioned in an
36 official capacity, stating his findings of fact
37 and his conclusions and recommendations and tak-
38 ing notice of:

39 (1) The statutory authority of the agency
40 to take the proposed action; and

1 (2) All relevant substantive and procedural
2 requirements of law or rule.

3 5. Rules. The chief hearing examiner shall adopt
4 rules to govern the procedural conduct of adjudicatory
5 proceedings. The procedural rules for hearings
6 shall be consistent with applicable laws relating to
7 those proceedings, shall be binding in all adjudicatory
8 proceedings required to be conducted by an examiner
9 from the Office of Hearing Examiners and shall
10 supersede any other agency procedural rule with which
11 they may be in conflict. The adoption or modification
12 of rules by the Chief Hearing Examiner shall be in
13 accordance with and subject to the requirements of
14 subchapter II. Upon his own initiative or upon written
15 request of an interested party, the Chief Hearing
16 Examiner may issue a subpoena for the attendance of a
17 witness or the production of such books, papers,
18 records or other documents as are material to the
19 matter being heard.

20 6. Record. A full and complete record shall be
21 kept of all adjudicatory proceedings had before an
22 examiner of the Office of Hearing Examiners and all
23 testimony shall be taken by a hearing's reporter ap-
24 pointed by the Chief Hearing Examiner subject to the
25 Personnel Law. In addition, the Chief Hearing Exami-
26 ner may contract with nongovernmental sources for
27 hearing's reporter services.

28 7. Costs. The Chief Hearing Examiner shall as-
29 sess agencies the cost of services rendered to them
30 in the conduct of hearings.

31 8. Account established. An Office of Hearing Ex-
32 aminers Account is created in the State Treasury. All
33 receipts from services rendered by the Office of
34 Hearing Examiners shall be deposited in the account
35 and all funds in the account shall be appropriated
36 annually to the Office of Hearing Examiners for car-
37 rying out the duties specified in this section.

38 §9071. Adjudicatory proceedings; hearings and notice

39 Prior to the assignment of a case to a hearing
40 examiner, as provided by section 9070, all papers
41 shall be filed with the agency. The Chief Hearing Ex-

1 aminer shall promptly notify the agency of the hear-
2 ing examiner assigned to the case. Subsequent to as-
3 signment of the case to a hearing examiner, the agen-
4 cy shall certify the official record to the Office of
5 Hearing Examiners. Until recertification of the
6 record to the agency, all papers shall be filed with
7 that office. The agency shall notify all parties that
8 the certification has been made. The Office of Hear-
9 ing Examiners shall maintain the official record of
10 the adjudicatory proceeding which shall include sub-
11 sequent filings, pleadings, motions, testimony and
12 exhibits. Upon issuance of a hearing examiner's re-
13 port, except a hearing examiner's report pertaining
14 to a contested petition to intervene, the official
15 record shall be certified to the agency. Evidence
16 taken in adjudicatory proceedings before a hearing
17 examiner from the Office of Hearing Examiners shall
18 have the same force and effect as though taken and
19 received by the agency and shall authorize action as
20 though so taken and received. The hearing examiner's
21 report may recommend informal disposition of any ad-
22 judicatory proceeding by stipulation, agreed state-
23 ment, consent order or default.

24 §9072. Proposal for decision in adjudicatory pro-
25 ceedings

26 In all adjudicatory proceedings before a hearing
27 examiner from the Office of Hearing Examiners, the
28 decision of the agency that is to render the final
29 decision shall not be made by the agency until the
30 report of the hearing examiner has been made availa-
31 ble to the agency and to the parties to the proceed-
32 ing for at least 10 days and an opportunity has been
33 afforded to each party adversely affected to file ex-
34 ceptions and present argument to a majority of the
35 officials who are to render the decision. Whenever
36 the decision of the agency that is to render the fi-
37 nal decision is required by law to be made by a date
38 certain or upon the expiration of a specified period,
39 the report of the hearing examiner shall be made
40 available to the agency at least 30 days prior to the
41 date or the expiration of the period.

42 Sec. 5. 35 MRSA §17, sub-§4, as amended by PL
43 1983, c. 390, §2, is further amended to read:

1 4. Use of funds. The Public Utilities Commission
2 is authorized to fund 25 employees beginning in the
3 1983-84 fiscal year from the revenues provided in
4 this section to defray the costs incurred by the com-
5 mission pursuant to this Title and to include admin-
6 istrative expenses, general regulatory expenses, con-
7 sulting fees and all other reasonable costs incurred
8 to administer this Title, including all costs and
9 charges assessed to the commission by the Office of
10 Hearing Examiners. Notwithstanding any other provi-
11 sion of law, the number of employees funded by this
12 section shall be increased by 10 on the effective
13 date of this Act June 19, 1981, establishing the Pub-
14 lic Advocate to compensate for an equivalent reduc-
15 tion in the number of employees funded by the General
16 Fund revenues which elsewhere in this section are ap-
17 propriated for the use of the Public Advocate.

18 Sec. 6. 35 MRSA §299, as amended by PL 1981, c.
19 642, is repealed and the following enacted in its
20 place:

21 §299. Hearings; examiners

22 Each of the commissioners, for the purposes men-
23 tioned in chapters 1 to 17, may conduct investiga-
24 tions, administer oaths, certify to official acts,
25 issue subpoenas, compel the attendance of witnesses
26 and the production of books, accounts, papers, docu-
27 ments and testimony, punish by fine and imprisonment
28 for contempt and issue all processes necessary to the
29 performance of the duties of the commission. All ad-
30 judicatory proceedings, as defined in Title 5, sec-
31 tion 8002, subsection 1, held under chapters 1 to 17
32 shall be conducted by a hearing examiner from the Of-
33 fice of Hearing Examiners, appointed by the Chief
34 Hearing Examiner pursuant to Title 5, chapter 375,
35 subchapter IV-A. Within the time specified by law or,
36 if no time is specified, within 30 days after the
37 filing of any petition, application, complaint docu-
38 ment or other paper initiating an adjudicatory pro-
39 ceeding under chapters 1 to 17 or the filing of a re-
40 quest for hearing in any such adjudicatory proceed-
41 ing, the commission shall determine whether to hold a
42 public hearing with respect thereto. Whenever the

1 commission determines to hold a public hearing in any
2 such adjudicatory proceeding, it shall promptly noti-
3 fy the Office of Hearing Examiners. The notice shall
4 specify the date, if any, by which the commission is
5 required by law to issue its order. With respect to
6 public hearings pursuant to section 69, the notice
7 shall specify whether the commission has initially
8 suspended the operation of any schedule of proposed
9 rate or rates or any part thereof, shall indicate the
10 expiration date of the initial suspension period and
11 shall further indicate that, unless the commission
12 receives the hearing examiner's report pursuant to
13 Title 5, section 9071, by the 30th day before the ex-
14 piration of the initial or a subsequent suspension
15 period, the commission shall extend the time of sus-
16 pension for such further period as may be permitted
17 under section 69.

18 STATEMENT OF FACT

19 This bill creates the Office of Hearing Examiners
20 to provide for an expeditious, impartial and fair
21 hearing process for adjudicatory proceedings before
22 the commission. Relieving the commission from the
23 day-to-day responsibility for the scheduling and con-
24 duct of hearings will promote a speedier and more ef-
25 ficient hearing process and enable the commission to
26 devote a larger part of its time to the important de-
27 cision-making process entrusted to it. Funds derived
28 from utility assessments will be made available to
29 reimburse the Office of Hearing Examiners for the
30 costs of conducting adjudicatory proceedings on be-
31 half of the commission. Presumably, the costs of in-
32 dependent hearing examiners from the Office of Hear-
33 ing Examiners will be offset by savings of hearing
34 examiner expense now being incurred by the commis-
35 sion.

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