

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)



115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1889

H.P. 1307

House of Representatives, May 20, 1991

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative FOSS of Yarmouth.
Cosponsored by Senator GILL of Cumberland.

STATE OF MAINE

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

**An Act to Establish the Maine Committee on Aging within the
Department of Human Services and to Establish the Office of the
Long-term Care Ombudsman as an Independent Entity.**



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

PART A

Sec. A-1. 5 MRSA §12004-I, sub-§49-B is enacted to read:

<u>49-B.</u>	<u>Maine</u>	<u>Expenses</u>	<u>22 MRSA</u>
<u>Human</u>	<u>Committee</u>	<u>Only</u>	<u>§5112-A</u>
<u>Services</u>	<u>on Aging</u>		

Sec. A-2. 5 MRSA §12004-J, sub-§4, as enacted by PL 1987, c. 786, §5, is repealed.

Sec. A-3. 22 MRSA c.1455, as amended, is repealed.

Sec. A-4. 22 MRSA c.1456 is enacted to read:

CHAPTER 1456

MAINE COMMITTEE ON AGING

§5112-A. Membership

1. Members; appointment. The Maine Committee on Aging is established by Title 5, section 12004-I, subsection 49-B, within the Department of Human Services. The committee consists of the following 15 members: 13 members appointed by the Governor and 2 members of the Legislature, one member from the Senate appointed by the President of the Senate and one member from the House of Representatives appointed by the Speaker of the House of Representatives.

2. Membership; representation. The Governor shall select members from leaders of the State's elderly population in a number of fields, such as income, health, housing and community and social services. Members must have proven experience in private, public and voluntary organizations such as statewide membership groups, task forces on aging, regional and county councils of elderly people and municipal-level senior citizens clubs. Members must have demonstrated an unselfish interest in elderly people and at least 8 members must be elderly Americans. All members must be citizens of the State.

3. Terms; vacancies. Except as provided in paragraphs A and B, members are appointed for terms of 3 years. Any vacancy in the committee does not affect its powers, but must be filled in the same manner as the original appointment was made.

A. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed is appointed only for the remainder of that term.

2 B. Legislative members serve during their legislative terms.

4 4. Reappointment; termination. Members are eligible for
6 reappointment, but a member may not serve more than 2 consecutive
8 full terms of 3 years each. Members may serve after the
expiration of their terms until their successors have been
appointed and qualified and taken office.

10 The Governor may terminate the appointment of any member of the
12 committee appointed by the Governor for just cause and the reason
14 for the termination of each appointment must be communicated to
16 the terminated member. The appointment of any member of the
committee must be terminated if a member is absent from 3
consecutive meetings without good and just cause that is
communicated to the chair of the committee.

18 5. Ineligibility to serve on the committee. An official,
20 employee, consultant or any other individual employed, retained
22 or otherwise compensated by or representative of the executive
branch of State Government may not be a member of the committee.

24 No member of the committee or staff member or volunteer employed
26 by the committee may have a conflict of interest as prohibited by
the amended federal 1987 Older Americans Act (OAA), 42 United
States Code, Section 3027 (a) (12) (F) (i, ii and iii).

28 6. Chair. The Governor shall designate one member to chair
30 the committee for a term of 2 years. The chair may be
reappointed by the Governor.

32 7. Subcommittee. The committee is authorized to appoint
34 subcommittees consisting of its own members and to allow guests
of the committee to attend meetings.

36 8. Administration. The commissioner, to the extent
38 feasible and reasonable, shall provide the committee any staff,
40 facilities, equipment, supplies, information and other assistance
reasonably required to carry out its activities.

42 §5112-B. Meetings; compensation; quorum.

44 1. Calling meetings. The committee shall meet at the call
of the chair.

46 2. Frequency of meetings. The committee shall meet at
48 least 4 times a year.

50 3. Minutes. The committee shall keep minutes of all
52 meetings, including a list of all people in attendance. The
committee shall immediately send copies of the minutes to the
Governor, the commissioner, the Legislative Council and the

2 Long-term Care Ombudsman.

4 4. Compensation. Members of the committee are compensated
according to Title 5, chapter 379.

6 5. Quorum; committee action. A majority of the committee
members constitutes a quorum for the purpose of conducting the
8 business of the committee and exercising all the powers of the
committee. A vote of the majority of the members present is
10 sufficient for all actions of the committee.

12 §5112-C. Duties of the committee

14 The committee has the following duties.

16 1. Advise; consult and assist. The committee shall, in
close consultation with the Long-term Care Ombudsman, advise,
18 consult and assist the executive and legislative branches of
State Government, especially the Governor, on activities of State
20 Government related to elderly people. The committee is solely
advisory in nature. The committee may make recommendations
22 regarding any functions intended to benefit elderly people. If
findings, comments or recommendations of the committee vary from
24 or are in addition to those of any state bureau or department,
such statements of the committee are sent to the respective
26 branches of State Government as attachments to those submitted by
that bureau or department. Recommendations may take the form of
28 proposed budgetary, legislative or policy action.

30 2. Advocate. The committee shall, in cooperation with the
Long-term Care Ombudsman, advocate on behalf of elderly people by
32 promoting and assisting activities designed to enhance at the
national, state and community levels the well-being of elderly
34 people. Committee members may assist the Long-term Care
Ombudsman by serving on behalf of individual citizens and elderly
36 people before officers of State Government, the Governor, the
Legislature, the public-at-large and the Federal Government.

38 3. Serve as advisory committee. The committee shall serve
as the advisory committee on behalf of the elderly people of the
40 State to the pertinent state agencies as may be required by state
or federal laws and their successors, including, but not limited
42 to:

44 A. The Priority Social Services Act of 1973, including only
46 coordinated programs for elderly people, meals for elderly
people and transportation for elderly people;

48 B. The Household Tax and Rent Refund Act, Title 36, chapter
50 907;

52 C. The Maine Housing Authority Act;

2 D. The federal Older Americans Act of 1965, 42 United
States Code, Section 3001, et seq.;

4 E. Title IV or Title VI, or its successors, or amendments
or additions, of the federal Social Security Act, 42 United
6 States Code, Section 301, et seq., as it relates to older
8 people; and

10 F. The Long-term Care Ombudsman.

12 4. Review committee. The committee shall authorize a
subcommittee consisting of 5 members appointed by the chair to be
14 responsible for analysis of proposals and submission of advisory
recommendations to the commissioner concerning the acceptability
16 of proposals requesting award of state-administered grant funds
under subsection 3, paragraphs A and D. To ensure coordination
18 and prevent duplication of services, the committee shall review
and comment on, under its own initiative or at the request of any
20 state or federal department or agency, any proposed agreement or
agreements between any agency or organization within the State
22 and a state or federal department or agency for assistance in
meeting the needs of elderly people.

24 5. Inform the public. In consultation with the Bureau of
Elder and Adult Services the committee shall develop a firm
26 public understanding of the current status of the State's elderly
population, including information on effective programs elsewhere
28 in the State or the nation.

30 6. Public forums. As resources of the department permit,
the committee shall provide and sponsor public forums, public
32 hearings, conferences, workshops and other meetings to obtain
information about, discuss or publicize the needs of and
34 solutions to problems of elderly people. The committee, with the
Bureau of Elder and Adult Services, shall hold a statewide Blaine
36 House Conference on Aging at least every 2 years and may hold
regional conferences and meetings.

40 **PART B**

42 **5 MRSA c. 437 is enacted to read:**

44 **CHAPTER 437**

46 **LONG-TERM CARE OMBUDSMAN**

48 **§19131. Long-term Care Ombudsman**

50 1. Office established. The Office of the Long-term Care
Ombudsman is established within the Executive Department. Its

2 purpose is to provide advocacy and ombudsman services for elderly
3 people.

4 2. Appointment of Long-term Care Ombudsman. The Long-term
5 Care Ombudsman is appointed by the Governor, subject to review by
6 the joint standing committee of the Legislature having
7 jurisdiction over long-term care issues and serves at the
8 pleasure of the Governor. The ombudsman must hold a law degree
9 and, in accordance with the federal Older Americans Act,
10 amendments of 1987, 42 United States Code, Section 3001 et seq.,
11 no person may serve as an ombudsman without receiving training on
12 the rights and responsibilities of ombudsmen.

13 3. Powers. The ombudsman may:

14 A. In close consultation with the Maine Committee on Aging:

15 (1) Advise and assist executive and legislative
16 branches of State Government, including the Department
17 of Human Services, Bureau of Elder and Adult Services,
18 on activities of State Government related to services
19 for elderly persons. The ombudsman may make
20 recommendations regarding any function intended to
21 improve the quality of services for elderly persons
22 provided by State Government. The ombudsman acts in a
23 solely advisory capacity and may not be delegated any
24 administrative authority or responsibility nor supplant
25 existing avenues for recourse or appeals;

26 (2) Review and evaluate state and federal policies and
27 programs regarding the provisions of long-term care
28 services conducted or assisted by any state departments
29 or agencies for the purpose of determining the value
30 and impact on individuals involved in the State's
31 welfare system;

32 (3) Conduct research, gather facts and evaluate
33 procedures and policies regarding the State's long-term
34 care services; and consult with and advise state
35 agencies on services and recommend remedial actions; and

36 (4) Inform the public to encourage a better public
37 understanding of the status of the State's long-term
38 care services system by collecting and disseminating
39 information, conducting or commissioning studies and
40 publishing the results and by issuing publications and
41 reports;

42 B. Enter the premises of any boarding care facility
43 licensed according to Title 22, section 7801 and any nursing
44 home facility licensed according to Title 22, section 1817
45 and any other facility licensed according to Title 22, section 1817.

2 in order to investigate complaints concerning those
3 facilities;

4 C. Investigate complaints received on behalf of individuals
5 receiving long-term care services provided by the home-based
6 care programs, Medicaid waiver program, licensed home health
7 agencies, certified homemaker agencies and licensed adult
8 day care agencies. To carry out this function, ombudsman
9 staff, or volunteers who have been authorized, such as
10 members of the Maine Committee on Aging, may enter the
11 premises of any adult foster care facility, boarding care
12 facility or nursing home during the course of an
13 investigation, speak privately with any individual therein
14 who consents to the conversation and inspect and copy any
15 records pertaining to a resident, as long as the resident,
16 or the legal representative of the resident, consents in
17 writing to that inspection. The consent, when required and
18 not obtainable in writing, may be conveyed orally or
19 otherwise to the staff of the facility or home. When a
20 resident is not competent to grant consent and has no legal
21 representative, the ombudsman may inspect the resident's
22 records and may make copies that do not contain material
23 that identifies the person without the written consent of a
24 duly appointed legal representative. The ombudsman may
25 authorize other persons, such as members of the Maine
26 Committee on Aging, to carry out this function. Appropriate
27 identification must be issued to all such persons; and

28 D. Take actions to resolve complaints after investigation,
29 including informal complaint resolution, referral to the
30 appropriate licensing authority and referral to the Attorney
31 General.

32 4. Confidentiality of records. Information or records
33 relating to complaints may not be disclosed unless the ombudsman
34 authorizes the disclosure and the ombudsman may not disclose the
35 identity of any complainant or resident unless:

36 A. The complainant or resident, or a legal representative
37 of either, consents in writing to the disclosure with
38 respect to that complainant or resident respectively; or

39 B. A court orders the disclosure.

40 The complainant or resident, or legal representative of either,
41 in providing the consent, may specify to whom the identity may be
42 disclosed and for what purpose, in which case no other disclosure
43 is authorized.

44 Any person, official or institution that in good faith
45 participates in registering a complaint pursuant to this
46 subsection, or in good faith investigates that complaint or
47 subsequent to the filing of a complaint, shall be held
48 liable for any damages caused by the disclosure of the
49 identity of the complainant or resident, or the legal
50 representative of either, if the disclosure is made
51 in violation of this subsection.

2 provides access to those persons carrying out the investigation,
4 about an act or practice in any licensed boarding care facility
6 or any licensed nursing home licensed according to Title 22,
8 section 5154, 7801 or 1817, or that participates in a judicial
10 proceeding resulting from that complaint, is immune from any
12 civil or criminal liability that otherwise might result because
14 of these actions. For the purpose of any civil or criminal
16 proceedings, there is a rebuttable presumption that any person,
18 official or institution acting pursuant to this subsection did so
20 in good faith.

22 5. Administration. The ombudsman shall administer, in
24 accordance with current fiscal and accounting rules of the State
26 and in accordance with this subchapter, any funds appropriated
28 for expenditure by the ombudsman or any grants or gifts that may
30 become available, accepted and received by the ombudsman; make an
32 annual report that must be submitted directly to the Governor and
34 the joint standing committee of the Legislature having
36 jurisdiction over human resource matters, not later than March
38 1st of each year, concerning its work, recommendations and
40 interests of the previous fiscal year and future plans; and make
42 any interim reports that the ombudsman considers advisable.
44 Copies of these reports must be available to all Legislators and
46 state agencies upon request.

26 6. Expenses of ombudsman. The ombudsman, within
28 established budgetary limits and as allowed by law, shall
30 authorize and approve travel, subsistence and related necessary
32 expenses of the ombudsman or members of the office incurred while
34 traveling on official business.

32 7. Legal services. The Department of the Attorney General
34 shall provide legal services as necessary to carry out the
36 purposes of this subchapter.

36 8. Location. Office space must be made available for the
38 ombudsman within the Capitol Complex.

38 9. Review. This office must be reviewed by July 1, 1992,
40 by the joint standing committee of the Legislature having
42 jurisdiction over human resource matters and the joint standing
44 committee of the Legislature having jurisdiction over audit and
46 program review matters.

PART C

46 Sec. C-1. Appropriation. The following funds are appropriated
48 from the General Fund to carry out the purposes of this Act.

50

1991-92

1992-93

2 MAINE COMMITTEE ON AGING

4 Maine Committee on Aging

6	Positions	(-6.0)	(-6.0)
	Personal Services	(\$227,442)	(\$245,166)
	All Other	(61,888)	(65,021)

8 Provides for the
 10 deappropriation of funds due
 12 to the elimination of the
 14 following positions: one
 16 Executive Director position,
 18 one Planning and Research
 20 Associate I position, one
 Secretary position, one Clerk
 Typist II position and 2
 Advocate positions and other
 related costs of the Maine
 Committee on Aging.

22 MAINE COMMITTEE ON AGING
 24 TOTAL

(\$289,330)	(\$310,187)
-------------	-------------

26 Sec. C-2. Allocation. The following funds are allocated from
 Federal Expenditure funds to carry out the purposes of this Act.

1991-92	1992-93
---------	---------

30 MAINE COMMITTEE ON AGING

32 Maine Committee on Aging

34	Positions - Other Count	(-1.0)	(-1.0)
	Personal Services	(\$47,942)	(\$50,403)
36	All Other	(9,412)	(7,469)

38 Provides for the deallocation
 40 of funds due to the transfer
 42 of the Maine Committee on
 Aging functions to the
 Department of Human Services
 44 and the transfer of one
 Social Services Program
 Specialist II position to the
 46 Bureau of Elder and Adult
 Services.

50 MAINE COMMITTEE ON AGING
 TOTAL

(\$57,354)	(\$57,872)
------------	------------

2 EXECUTIVE DEPARTMENT

4 Office of the Long-term Care Ombudsman

6	Positions - Other Count	(1.0)	(1.0)
	Personal Services	\$47,942	\$50,403
	All Other	9,412	7,469

8 Provides for the allocation
10 of funds due to the transfer
12 of one Social Services
14 Program Specialist II
16 position from the Maine
Committee on Aging to Office
of the Long-term Care
Ombudsman.

18 EXECUTIVE DEPARTMENT
19 TOTAL

\$57,354	\$57,872
----------	----------

20 TOTAL ALLOCATIONS

\$-0-	\$-0-
-------	-------

22 Sec. C-3. Allocation. The following funds are allocated from
24 Other Special Revenue funds to carry out the purposes of this Act.

26	1991-92	1992-93
----	---------	---------

28 MAINE COMMITTEE ON AGING

30 Maine Committee on Aging

32	All Other	(\$3,000)	(\$3,000)
----	-----------	-----------	-----------

34 Provides for the deallocation
36 of funds due to the
elimination of the
38 independent status of the
Maine Committee on Aging and
40 its establishment within the
Department of Human Services.

42 STATEMENT OF FACT

44 This bill establishes the Maine Committee on Aging within
46 the Department of Human Services and the Office of the Long-term
48 Care Ombudsman as an independent entity.