

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2292

H.P. 1629

House of Representatives, February 4, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Judiciary suggested and ordered printed.

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

EDWIN H. PERT, Clerk

Presented by Representative CARROLL of Gray.

Cosponsored by Representative TRACY of Rome, Representative BAILEY of Township 27
and Representative LOOK of Jonesboro.

STATE OF MAINE

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

An Act Concerning the Bureau of Intergovernmental Drug Enforcement.

(EMERGENCY)



2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 Whereas, delay in implementing changes in the laws
6 concerning drug enforcement will result in undue burden on the
citizens of the State; and

8 Whereas, delay in implementing changes in the laws will
10 result in unnecessary confusion by prosecutors and law
enforcement officers in the State who are attempting to comply
12 with state law in their efforts to ensure that there exists an
effective drug enforcement effort in place based on the
14 cooperation between local, state and federal agencies; and

16 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
18 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
20 safety; now, therefore,

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

24 **Sec. 1. 2 MRSA §6, sub-§5,** as amended by PL 1989, c. 612, is
further amended to read:

26 **5. Range 86.** The salaries of the following state officials
28 and employees shall-be are within salary range 86:

30 Director of Labor Standards;

32 Deputy Chief of the State Police;

34 Director of State Lotteries;

36 State Archivist;

38 Director of Maine Geological Survey;

40 Executive Director, Maine Land Use Regulation Commission;

42 Director of the Risk Management Division;

44 ~~Chairman~~ Chair, Maine Unemployment Insurance Commission;

46 Director of the Bureau of State Employee Health;

48 Child Welfare Services Ombudsman;

2 Director of the ~~Bureau of Intergovernmental Drug Enforcement~~
3 Maine Drug Enforcement Agency;

4 Deputy Director, Operations, Retirement System;

6 Deputy Director, Investments, Retirement System;

8 Deputy Director, Administrative and Legal Affairs,
9 Retirement System; and

10 Executive Director, Maine Science and Technology Commission.

12 **Sec. 2. 5 MRSA §7-B**, as amended by PL 1991, c. 618, §1 and
14 affected by §7, is further amended to read:

16 **§7-B. Use of state vehicles for commuting**

18 No state-owned or state-leased vehicle may be used by any
19 employee to commute between home and work, except for those
20 vehicles authorized and assigned to a law enforcement official
21 within the following organizational units: Bureau of State
22 Police; ~~Bureau of Intergovernmental Drug Enforcement~~ Maine Drug
23 Enforcement Agency; Office of the State Fire Marshal; Bureau of
24 Liquor Enforcement; Division of Motor Vehicles; Bureau of Marine
25 Patrol; Bureau of Forestry; Division of Forest Fire Control;
26 Bureau of Warden Service; and Bureau of Parks and Recreation.

28 **Sec. 3. 25 MRSA §2901**, as amended by PL 1989, c. 648, §2, is
29 further amended to read:

30 **§2901. Department; commissioner**

32 There is created and established the Department of Public
33 Safety to coordinate and efficiently manage the law enforcement
34 and public safety responsibilities of the State, to consist of
35 the Commissioner of Public Safety, in this chapter called
36 "commissioner," who shall--be is appointed by the Governor,
37 subject to review by the joint standing committee of the
38 Legislature having jurisdiction over state and local government
39 and to confirmation by the Legislature, to serve at the pleasure
40 of the Governor, and the following as created and established:
41 the Bureau of State Police, the Bureau of Liquor Enforcement, the
42 Office of the State Fire Marshal, the Maine Criminal Justice
43 Academy, the Maine Highway Safety Commission, and the Bureau of
44 Highway Safety ~~and the Bureau of Intergovernmental Drug~~
45 ~~Enforcement~~.

48 **Sec. 4. 25 MRSA §2902, sub-§4**, as amended by PL 1989, c. 648,
49 §3 and c. 700, Pt. A, §101, is repealed and the following enacted
50 in its place:

2 **4. Maine Highway Safety Commission.** The Maine Highway
3 Safety Commission, as authorized by Title 5, section 12004-I,
4 subsection 83, is under the direction of the Commissioner of
5 Public Safety and advisory to the Governor. The commission
6 consists of not more than 25 members selected by the Governor
7 from state, civic and industrial organizations and individuals
8 with interests relating to highway safety. The Commissioner of
9 Public Safety, the Commissioner of Transportation, the
10 Commissioner of Human Services, the Commissioner of Education,
11 the Secretary of State and the Attorney General serve as ex
12 officio members. The ex officio members shall appoint persons in
13 major policy-influencing positions as their designees to
14 represent them at meetings of the commission with voting
15 privileges. The commission members shall serve at the pleasure
16 of the Governor and are entitled to compensation in accordance
17 with Title 5, chapter 379. The commission shall stimulate active
18 support for highway safety measures and programs and advise the
19 Department of Public Safety regarding these issues. The
20 commission shall annually report its findings and
21 recommendations, including any necessary implementing
22 legislation, to the Governor and to the joint standing committee
23 of the Legislature having jurisdiction over state and local
24 government; and

25 **Sec. 5. 25 MRSA §2902, sub-§6,** as amended by PL 1989, c. 648,
26 §4, is repealed.

27 **Sec. 6. 25 MRSA §2952, sub-§§2 to 6** are enacted to read:

28 **2. Agency.** "Agency" means the Maine Drug Enforcement
29 Agency.

30 **3. Assistant director.** "Assistant director" means the
31 Assistant Director of the Maine Drug Enforcement Agency.

32 **4. Board.** "Board" means the Maine Drug Enforcement Agency
33 Advisory Board.

34 **5. Commissioner.** "Commissioner" means the Commissioner of
35 Public Safety.

36 **6. Director.** "Director" means the Director of the Maine
37 Drug Enforcement Agency.

38 **Sec. 7. 25 MRSA §2953,** as enacted by PL 1987, c. 411, §5, is
39 amended to read:

40 **§2953. Policy**

2 The Legislature finds that the distribution of scheduled
4 drugs into, out of and within the State presents an unprecedented
6 threat to the health and safety of this State. To meet this
8 threat, this Act is established to develop a statewide drug
10 enforcement program and strategy, operated by a division of the
12 State Police, based upon ~~principals~~ on principles of integration
14 and unification at all levels of law enforcement, including
16 federal, state, county and municipal levels and ~~including both~~
18 prosecutorial as well as investigative agencies.

20 **Sec. 8. 25 MRSA §2954**, as amended by PL 1987, c. 666, §6, is
22 further amended to read:

24 **§2954. Maine Drug Enforcement Agency Advisory Board**

26 In order to develop, coordinate and ~~carry-out~~ a statewide
28 drug enforcement program and strategy, there is established an
30 ~~Intergovernmental~~ the Maine Drug Enforcement Policy Agency
32 Advisory Board, which shall ~~consist~~ consists of the Director of
34 the Maine Drug Enforcement Agency; 2 representatives designated
36 by the Maine Chiefs of Police Association; a representative
38 designated by the Maine Sheriffs' Association; 2 representatives
40 designated by the several district attorneys; one representative
42 that is employed as an investigator; one representative that is
44 employed as a sergeant; one representative from the joint
46 standing committee of the Legislature having jurisdiction over
48 judicial matters; the Attorney General; the Chief of the Maine
50 State Police; a representative of the Office of the United States
Attorney for the District of Maine; ~~3 other members appointed by
the Governor for terms of 2 years, one of whom shall be a
representative of municipal law enforcement, one of whom shall be
a representative of the sheriffs of the respective counties and
one of whom shall be a representative of the district attorneys
of the respective counties; and the commissioner who shall serve
serves~~ ex officio. The board shall provide advice, consultation
and direction ~~for~~ to the agency on the drug law enforcement
effort within the State. This effort shall must include the
integration and coordination of investigative and prosecutorial
functions in the State with respect to drug law enforcement. The
board ~~shall also make recommendations to the Legislature as it
determines to be appropriate for the implementation of an
effective drug law enforcement program.~~

44 The board, ~~in addition to these responsibilities, with the
46 commissioner, shall direct, coordinate and oversee the
48 integration of law enforcement officers from county, municipal
and all state law enforcement agencies, into the bureau.~~

50 **Sec. 9. 25 MRSA §2955**, as amended by PL 1991, c. 154, §§1 and
2, is further amended to read:

2 **§2955. Maine Drug Enforcement Agency, division of the State**
3 **Police**

4
5 The commissioner Chief of the State Police, in conformity
6 with the advice and consultation and direction of the board,
7 shall establish and operate within ~~the Bureau of~~
8 Intergovernmental Drug Enforcement such a drug enforcement agency
9 division known as the Maine Drug Enforcement Agency, which must
10 include as many regional investigative task forces as he the
11 Chief of the State Police determines, ~~in consultation with the~~
12 ~~board~~, are required for effective drug law enforcement throughout
13 the State.

14
15 The investigative component of each task force shall be
16 comprised is composed of law enforcement officers drawn from
17 municipal, county and state law enforcement agencies, who, during
18 the period in which they serve in the task force, shall must be
19 placed on a temporary assignment by their employing law
20 enforcement agencies and in the nonclassified positions within
21 the bureau agency as established. All ~~bureau~~ Such investigative
22 personnel shall may not be state employees, as defined in Title
23 26, section 979-A, subsection 6, except for Department of Public
24 Safety sworn personnel who may be state employees. All bureau
25 such investigative personnel shall act in accordance with such
26 rules as ~~may be promulgated~~ adopted by the commissioner ~~and~~
27 ~~subject to policies and procedures established by the board~~ Chief
28 of the State Police. In determining the number, areas of
29 responsibility and investigative complement of these task forces,
30 the commissioner director shall take into account geography,
31 population, the need for service and the advice, consultation and
32 direction provided by the board.

33
34 1. **Director.** The bureau ~~shall be~~ agency is managed by a
35 director who shall report directly to the commissioner Chief of
36 the State Police. The director must be an experienced law
37 enforcement officer at a rank of major or captain in the State
38 Police. The level of experience of the director must be in
39 accordance with rules adopted by the Chief of the State Police in
40 accordance with section 2956. The director shall must be
41 appointed by the commissioner ~~from a list of at least 3 persons~~
42 ~~recommended by the board and shall serve at the pleasure of the~~
43 ~~commissioner~~ Chief of the State Police with the approval of the
44 board. ~~Eligibility for this appointment shall not be dependent~~
45 ~~upon the parent law enforcement agency, if any, of the person~~
46 ~~selected. If the person selected is currently an employee of any~~
47 ~~state, county or local law enforcement agency, the person shall~~
48 ~~be placed on a temporary assignment by the person's employing~~
49 ~~agency. The director shall report directly to the commissioner,~~
50 ~~notwithstanding any existing command structure of the person's~~

employing agency. ~~Notwithstanding any other provision of law, the person shall retain and continue to accrue seniority and retirement rights and benefits within the person's employing agency for the time in which the person serves as director.~~

2. **Assistant director.** The director of the bureau shall agency, at the complete discretion of the Chief of the State Police, may be assisted by an assistant director. The assistant director must be an experienced law enforcement officer and may exercise any of the powers of the director as the director may delegate. The level of experience of the assistant director must be in accordance with rules adopted by the Chief of the State Police in accordance with section 2956. The assistant director shall must be appointed by and serve at the pleasure of the ~~commissioner acting upon the recommendation of the board~~ Chief of the State Police in consultation with the director.

Eligibility for the selection shall of an assistant director is not be dependent upon the parent law enforcement agency, if any, of the person selected. The assistant director shall must be compensated in a manner equivalent to that of a captain or a lieutenant in the State Police, with respect to both regular and overtime compensation. If the person selected is currently an employee of any state, county or local law enforcement agency, the person shall must be placed on a temporary assignment by the person's employing agency. The assistant director shall report directly to the director, notwithstanding any existing command structure of the person's employing agency. Notwithstanding any other provision of law, the person shall ~~retain~~ retains and ~~continue~~ continues to accrue seniority and retirement rights and benefits within the person's employing agency for the time in which the person serves as assistant director.

~~2-A. Regional commanders. There shall be 2 regional commanders within the bureau who may exercise any powers the director may delegate. Each regional commander must be an experienced law enforcement officer appointed by the director with the concurrence of the commissioner and shall serve at the pleasure of the director. The appointment of regional commanders shall not be dependent upon the parent law enforcement agency, if any, of the person selected. Regional commanders shall be compensated from the budget of the bureau in a manner equivalent to that of a lieutenant in the State Police, with respect to both regular and overtime compensation. If the person selected is currently an employee of any state, county or local law enforcement agency, the person shall be placed on a temporary assignment by the person's employing agency. A regional commander shall report directly to the director or assistant director, notwithstanding any existing command structure of the person's employing agency. Notwithstanding any other provision~~

2 of law, ~~the person shall retain and continue to accrue seniority~~
3 ~~and retirement rights and benefits within the person's employing~~
4 ~~agency for the time in which the person serves as regional~~
5 ~~commander.~~

6 **3. Sergeants.** Each regional task force shall must be
7 supervised by a ~~task force investigative supervisor~~ sergeant.
8 Each supervisor sergeant must be an experienced law enforcement
9 ~~officer appointed by the director with the concurrence of the~~
10 ~~commissioner and shall serve at the pleasure of the director~~
11 investigator. A sergeant serves a 6-month probationary period
12 upon enlistment and serves at the pleasure of the director and
13 the board. The appointment of supervisors ~~shall~~ a sergeant is
14 not be dependent upon the parent law enforcement agency, if any,
15 of the person selected. Supervisors ~~shall~~ A sergeant must be
16 compensated from the budget of the bureau agency in a manner
17 equivalent to that of a sergeant assigned ~~to the drug unit of or~~
18 detective in the State Police, with respect to both regular and
19 overtime compensation. If the person selected is currently an
20 employee of any state, county or local law enforcement agency,
21 the person shall must be placed on a temporary assignment by the
22 person's employing agency. A supervisor sergeant shall report
23 directly to the ~~regional commander~~ assistant director, if one
24 exists, or to the director if there is no assistant director,
25 notwithstanding any existing command structure of the person's
26 employing agency. Notwithstanding any other provision of law, the
27 person shall ~~retain~~ retains and ~~continue~~ continues to accrue
28 seniority and retirement rights and benefits within the person's
29 employing agency for the time in which the person serves as
30 supervisor sergeant.

31 **4. Task force investigators.** The investigative complement
32 of each regional task force shall ~~be comprised~~ is composed of
33 task force ~~investigative~~ agents investigators. Agents
34 Investigators may be selected from municipal, county and state
35 law enforcement agencies within the State and other state
36 agencies, provided as long as the prospective agent ~~has~~
37 investigators have been certified pursuant to section 2803
38 2803-A, subsection 1; or may be other experienced law enforcement
39 officers, provided as long as each has been certified pursuant to
40 section 2803 2803-A, subsection 1. Agents shall Investigators
41 must be selected and appointed at the discretion of the director
42 ~~with the concurrence of the commissioner~~ from among those persons
43 nominated by the chief administrative officer of a prospective
44 agent's investigator's employing agency and other experienced law
45 enforcement officers who apply. These investigators must be
46 experienced criminal investigators. The level of experience must
47 be in accordance with rules adopted by the Chief of the State
48 Police in accordance with section 2956. Agents shall
49 Investigators serve ~~at the pleasure of the director~~ for a maximum
50

of 3 years at which time they must return to their parent agencies to share their expertise with those agencies. Investigators serve a 6-month probationary period upon enlistment. The director may allow an investigator to stay with the agency for more than 3 years, but only to conclude an ongoing investigation. ~~Agents--shall~~ Investigators are entitled to receive compensation, paid from the budget of the bureau agency, equivalent to that of a detective in the State Police, with respect to both regular and overtime compensation with the additional credit given to seniority based upon law enforcement experience. If the person selected as an agent investigator is currently an employee of any municipal, county or state law enforcement agency, or any other state agency, the person shall must be placed on a temporary assignment by the person's employing agency. An agent investigator shall report directly to the task force supervisor sergeant, notwithstanding any existing command structure of the person's employing agency. Notwithstanding any other provisions of law, the person shall ~~retain~~ retains and ~~continue~~ continues to accrue seniority and retirement rights and benefits within the person's employing agency for the time in which the person serves as an agent investigator.

Any person employed as a senior agent investigator or special agent investigator within the State Police may be temporarily assigned to the bureau agency. During such temporary assignment, the State Police shall retain the positions of senior agent investigator and special agent investigator.

5. Authority of agency officers. The director, assistant director, ~~regional-commanders--supervisors~~ sergeants and agents investigators are vested at the discretion of the ~~commissioner~~ Chief of the State Police with the following:

A. The authority throughout the State to arrest pursuant to Title 17-A, section 15;

B. The same powers and duties throughout the several counties of the State as sheriffs have in their respective counties to serve criminal process, to investigate and prosecute violators of any law of this State and to arrest without warrant and detain persons found violating or attempting to violate any other penal law of the State until a warrant can be obtained. They have the same rights as sheriffs to require aid in executing the duties of their office; and

C. The same powers and duties throughout the several counties of the State as sheriffs have in their respective counties to serve civil process in all matters relating to

investigations or violations of Title 17-A, chapter 45 or actions arising under or initiated pursuant to Title 15, chapter 517.

6. Task force attorneys. The Attorney General, the United States Attorney for the District of Maine and the respective district attorneys, at the request of the director, may assign as many of their assistants and special assistants as they determine to be appropriate to each of the regional task forces or to the bureau agency generally. The attorneys shall must be available to the bureau agency officers for purposes of ongoing consultation and advice on the propriety and legal consequences of methods of investigation and are responsible for coordinating, with the regional ~~commanders--and--supervisors~~ sergeants, the prosecutorial and investigative priorities of the regional task forces in conformity with the advice, consultation and direction provided by the board and the policies, practices and procedures of the bureau agency.

7. Compensation; State Police personnel. Notwithstanding any other provision in this section, Maine State Police officers, senior agents investigators and special ~~investigative--agents~~ investigators who are temporarily assigned to the bureau--will agency continue to be paid from the budget of the Bureau of State Police, except that any additional compensation arising from such that temporary assignment shall must be paid from the budget of the bureau agency.

8. Personnel. At no time may the State Police contribution of employees to the Maine Drug Enforcement Agency exceed 1/3 of the total employees unless the overall complement can not be met with Department of Public Safety, local and county personnel.

Sec. 10. 25 MRSA §2956, as amended by PL 1987, c. 666, §10, is further amended to read:

§2956. Authority of Chief of the State Police

1. Rules. The ~~commissioner~~ Chief of the State Police may adopt rules, practices and policies respecting the administration of the bureau agency. The rules, practices and policies of the bureau--shall agency must be in conformity with state law and with the advice,--~~consultation and direction~~ provided by the board and shall must accomplish the goal of an integrated drug enforcement effort. These rules, practices and policies may include:

A. The qualifications, hiring, term of service and disciplinary standards for supervisors sergeants and agents investigators;

2 B. Protection as to financial and employment security for
any law enforcement officer selected as any official of the
4 bureau agency with respect to the person's position with any
municipal, county or state law enforcement policy or
6 political subdivision;

8 C. Standard operating procedures for the bureau agency;

10 D. Procurement procedures; or

12 E. Procedures for dissemination of records.

14 **2. Grants and property.** The ~~commissioner~~ Chief of the
State Police may accept grants and property decreed forfeit by
16 any court of competent jurisdiction.

18 **3. Contracts or agreements.** The ~~commissioner~~ Chief of the
State Police may enter into contracts and agreements with
municipal, county and state law enforcement agencies to
20 accomplish the goal of the bureau agency and carry out the rules,
policies and practices of the board.

22 **Sec. 11. 25 MRSA §2957**, as enacted by PL 1987, c. 411, §5, is
24 amended to read:

26 **§2957. Confidentiality**

28 Notwithstanding any other provisions of law, the
~~investigative records of the bureau shall be and are declared to~~
30 ~~be confidential and~~ all meetings of the board, as well as
meetings of the bureau ~~shall not be~~ agency, are subject to Title
32 1, sections 401 to 410, except that such meetings may be held in
executive session to discuss any case investigations or any
34 employee disciplinary actions.

36 **Sec. 12. 29 MRSA §946-C, sub-§1, ¶B**, as enacted by PL 1991, c.
444, §5, is amended by amending subparagraph (8) to read:

38 (8) A Department of Public Safety vehicle operated by
40 a liquor enforcement officer for the purpose of
enforcing section 1312-B or Title 28-A, a state fire
42 inspector or a Bureau ~~of Intergovernmental Drug~~
~~Enforcement~~ Maine Drug Enforcement Agency officer;

44 **Sec. 13. Transition.** The Maine Drug Enforcement Agency is the
46 successor in every way to the powers, duties and functions of the
Bureau of Intergovernmental Drug Enforcement and shall carry out
48 the duties and responsibilities previously assigned to that
bureau. All grants, money, property, assets, appropriations,
50 contracts and agreements pertaining to the Bureau of

2 Intergovernmental Drug Enforcement are transferred to the Maine
3 Drug Enforcement Agency on the effective date of this Act. All
4 accrued assets, balances, appropriations, allocations, transfers,
5 grants, revenues, contracts or other available funds in an
6 account or subdivision of an account of the Bureau of
7 Intergovernmental Drug Enforcement are transferred to the Maine
8 Drug Enforcement Agency.

9 All records, property and equipment of the Bureau of
10 Intergovernmental Drug Enforcement become the property of the
11 Maine Drug Enforcement Agency on the effective date of this Act.

12 The Director of the Maine Drug Enforcement Agency has the
13 authority to enter into such contracts or agreements or apply for
14 such grants, modification to grants or money as may be necessary
15 to carry forth the work of the Bureau of Intergovernmental Drug
16 Enforcement. Nothing in this Act may be construed to violate any
17 requirements of any granting agency, including, but not limited
18 to, those received from the federal Bureau of Justice Assistance.

19 The director has the authority and discretion to establish
20 the location of the regional offices and choose the sergeants
21 supervising these offices. These sergeants must be selected from
22 current offices and employees. Investigative agents now employed
23 by the bureau remain employed as investigators with the Maine
24 Drug Enforcement Agency unless these employees have not worked
25 for their sponsoring agencies prior to assignment to the bureau.
26 All time periods related to such agents' employment begin on the
27 effective date of this Act.

28 **Emergency clause.** In view of the emergency cited in the
29 preamble, this Act takes effect when approved.

30
31
32
33
34 **STATEMENT OF FACT**

35 This bill eliminates the Bureau of Intergovernmental Drug
36 Enforcement and replaces it with the Maine Drug Enforcement
37 Agency, which is established as a division of the State Police.