

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

SECOND REGULAR SESSION-2012

Legislative Document

No. 1830

H.P. 1350

House of Representatives, February 22, 2012

**An Act To Establish the Department of Agriculture, Conservation
and Forestry**

(EMERGENCY)

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative TIMBERLAKE of Turner. (GOVERNOR'S BILL)
Cosponsored by Senator THIBODEAU of Waldo and Representatives: AYOTTE of Caswell,
BEAVERS of South Berwick, BENNETT of Kennebunk, BLACK of Wilton, BURNS of Whiting,
CEBRA of Naples, CLARK of Millinocket, COTTA of China, CRAY of Palmyra, CURTIS of
Madison, DILL of Old Town, DUNPHY of Embden, EDGEComb of Caribou, FITTS of
Pittsfield, FOSTER of Augusta, GIFFORD of Lincoln, GILLWAY of Searsport, GRAHAM of
North Yarmouth, GUERIN of Glenburn, HARLOW of Portland, HARMON of Palermo,
HARVELL of Farmington, KENT of Woolwich, KESCHL of Belgrade, LIBBY of Waterboro,
LONG of Sherman, MAKER of Calais, McCABE of Skowhegan, MORISSETTE of Winslow,
NEWENDYKE of Litchfield, O'BRIEN of Lincolnville, O'CONNOR of Berwick, PARKER of
Veazie, PICCHIOTTI of Fairfield, PRESCOTT of Topsham, RICHARDSON of Carmel,
RICHARDSON of Warren, RIOUX of Winterport, SARTY of Denmark, TURNER of Burlington,
WILLETTE of Mapleton, WILLETTE of Presque Isle, Senators: MASON of Androscoggin,
ROSEN of Hancock, SHERMAN of Aroostook.

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

Whereas, this legislation consolidates the Department of Agriculture, Food and Rural Resources and the Department of Conservation into a new Department of Agriculture, Conservation and Forestry and the establishment of the new department on July 1, 2012 is necessary for an orderly transition; and

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

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

PART A

Sec. A-1. 12-A MRSA is enacted to read:

TITLE 12-A

AGRICULTURE, CONSERVATION AND FORESTRY

SUBTITLE 1

DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

CHAPTER 1

DEPARTMENTAL ORGANIZATION AND OPERATION

SUBCHAPTER 1

GENERAL PROVISIONS

§101. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.

1. Commissioner. "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry.

2. Department. "Department" means the Department of Agriculture, Conservation and Forestry.

3. Seal. The department has an official seal, which must be judicially noticed.

SUBCHAPTER 2

ORGANIZATION

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§201. Department

1. Establishment. The Department of Agriculture, Conservation and Forestry is established as a cabinet-level department.

2. Divisions. The department consists of the divisions necessary to carry out the work of the department.

§202. Mission; guiding principles

1. Mission. The mission of the department is to serve as the steward of Maine's agricultural, forestry, water and land resources for the State.

2. Guiding principles. The following principles are adopted to guide the department in the performance of its duties:

A. Forestry, farming, conservation, public lands and other natural resource-based economic activity are important to the State's economy and quality of life; and

B. Strengthening farming, forestry, conservation, recreation, state parks, public lands and public access to the State's natural resources is vital to enhancing the State's natural resources economy.

§203. Commissioner

The department is under the control and supervision of the Commissioner of Agriculture, Conservation and Forestry, who reports directly to the Governor.

1. Appointment. The Governor shall appoint the commissioner, subject to review by the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters and confirmation by the Senate. The commissioner serves at the pleasure of the Governor.

2. Deputies; staff. The commissioner shall appoint 2 deputy commissioners, one of whom assists the commissioner with operations and administration of the department and one of whom assists the commissioner with agriculture, forestry and natural resources-based economic development.

3. Vacancy; commissioner. A vacancy in the office of the commissioner must be filled as follows.

A. A vacancy in the commissioner's position must be filled in accordance with Title 5, section 1.

B. The commissioner shall appoint one of the department's deputy commissioners to perform the duties of the commissioner, in addition to the duties of that deputy commissioner, during the commissioner's temporary absence or disability.

§204. Powers and duties of commissioner

The commissioner has all of the powers and duties necessary to carry out the mission and responsibilities of the department. The commissioner has the power to distribute the

1 functions and duties given to the commissioner under this Title, Title 7 and Title 12
2 among the various divisions of the department so as to integrate the work properly and to
3 promote the most economical and efficient administration of the department. Powers and
4 duties given to the commissioner or the department in this Title, Title 7 or Title 12 must
5 be assumed and carried out by the divisions that the commissioner designates and may in
6 turn be delegated to subordinates by division directors with the approval of the
7 commissioner.

8 **1. Administration.** The commissioner shall administer the department in
9 accordance with the requirements of this Title and shall fulfill the duties prescribed to the
10 commissioner by state and federal law.

11 **2. Rulemaking.** The commissioner shall adopt rules to implement this Title. Rules
12 adopted pursuant to this subsection are routine technical rules, as defined in Title 5,
13 chapter 375, subchapter 2-A, unless otherwise specified.

14 **3. Employees.** The commissioner may employ personnel as necessary to carry out
15 the work of the department. Except as otherwise provided by law, all personnel of the
16 department are under the immediate supervision, direction and control of the
17 commissioner. Department personnel are subject to the Civil Service Law, except for
18 positions subject to appointment by the commissioner under subsection 4 and as
19 otherwise specified.

20 **4. Appointments.** The deputy commissioners and division directors of the
21 department are appointed by the commissioner and serve at the pleasure of the
22 commissioner, except as otherwise provided by law. Deputy commissioners and division
23 directors appointed pursuant to this Title must have educational qualifications and
24 professional experience directly related to the functions of and services provided by the
25 relevant unit or division.

26 **§205. Department organization; divisions**

27 The department is composed of the following divisions, each of which is under the
28 direction and supervision of a director:

29 **1. Division of Agricultural Resource Development.** The Division of Agricultural
30 Resource Development, whose director must be qualified by training, experience and
31 skill in agricultural management;

32 **2. Division of Forestry.** The Division of Forestry, also known as the Maine Forest
33 Service, whose director must be qualified by training, experience and skill in forestry;

34 **3. Division of Parks and Public Lands.** The Division of Parks and Public Lands,
35 whose director must be qualified by training, experience and skill in parks, public lands,
36 outdoor recreation or natural resource management. The commissioner shall appoint a
37 deputy director to assist the director. The deputy director serves at the pleasure of the
38 commissioner;

1 3. All rules of the Department of Agriculture, Food and Rural Resources and the
2 Department of Conservation, as they pertain to the duties of the Department of
3 Agriculture, Conservation and Forestry as set forth in this Act, that are in effect on the
4 effective date of this Act remain in effect until rescinded, revised or amended.

5 4. All contracts, agreements and compacts of the Department of Agriculture, Food
6 and Rural Resources and the Department of Conservation, as they pertain to the duties set
7 forth in this Act, that are in effect on the effective date of this Act remain in effect until
8 they expire or are altered by the parties involved in the contracts, agreements or
9 compacts. The Department of Agriculture, Conservation and Forestry is the successor
10 agency for all federal grants and programs administered by the United States Department
11 of Agriculture and any other federal programs, grants and contracts.

12 5. All records of the Department of Agriculture, Food and Rural Resources and the
13 Department of Conservation, as they pertain to the duties set forth in this Act, must be
14 transferred to the Department of Agriculture, Conservation and Forestry as necessary to
15 implement this Act.

16 6. All property and equipment of any bureau, division or program of the Department
17 of Agriculture, Food and Rural Resources and the Department of Conservation pertaining
18 to the duties set forth in this Act are transferred to the Department of Agriculture,
19 Conservation and Forestry as necessary to implement this Act.

20 7. Notwithstanding the Maine Revised Statutes, Title 12-A, section 203 or any other
21 provision of law, upon the effective date of this Act, the individual holding the position of
22 Commissioner of Agriculture, Food and Rural Resources becomes the Commissioner of
23 Agriculture, Conservation and Forestry without the need of appointment or confirmation.
24 The Commissioner of Agriculture, Conservation and Forestry shall assume and is vested
25 with all of the duties and powers of that office, as well as the duties and powers of the
26 office of the Commissioner of Agriculture, Food and Rural Resources and the office of
27 the Commissioner of Conservation. This provision is intended to change the procedure
28 for appointment and confirmation of the first Commissioner of Agriculture, Conservation
29 and Forestry.

30 8. Employees of the Department of Agriculture, Conservation and Forestry who were
31 employees of the Department of Agriculture, Food and Rural Resources and the
32 Department of Conservation immediately prior to the effective date of this Act retain all
33 their employee rights, privileges and benefits, including sick leave, vacation and
34 seniority, provided under the Civil Service Law or collective bargaining agreements. The
35 Department of Administrative and Financial Services, Bureau of Human Resources shall
36 provide assistance to the affected departments and shall assist with the orderly
37 implementation of this subsection.

38 **Sec. B-2. Conflicts and inconsistencies.** If the Commissioner of Agriculture,
39 Conservation and Forestry finds a conflict or inconsistency between provisions in the
40 Maine Revised Statutes, Title 7 and Title 12 or rules adopted under those titles, the
41 commissioner shall attempt to resolve that conflict or inconsistency by interpreting the
42 laws or rules together to give effect to the intent of the Legislature or agency, as the case
43 may be. If the commissioner determines rulemaking is required to resolve a conflict or

1 inconsistency, the commissioner may adopt rules as authorized under Title 12-A, section
2 204, subsection 2. In adopting rules under this section, the commissioner has sole
3 discretion to determine whether an emergency exists. The commissioner shall notify the
4 members of the joint standing committee of the Legislature having jurisdiction over
5 agriculture, conservation and forestry matters prior to adopting any emergency rule under
6 this section.

7 **Sec. B-3. Interim meetings; authorized.** The joint standing committee of the
8 Legislature having jurisdiction over agriculture, conservation and forestry matters is
9 authorized to meet during the 2012 legislative interim, but no later than June 15, 2012, to
10 hear a report regarding planning, program operation and implementation issues related to
11 the establishment of the Department of Agriculture, Conservation and Forestry. At these
12 meetings, the Commissioner of Agriculture, Conservation and Forestry shall brief the
13 committee on program operation issues, progress, challenges and the timeline for
14 implementation. The committee shall provide opportunities for stakeholders to
15 communicate with the committee.

16 **Sec. B-4. Legislation; review.** Following the development of a department
17 budget pursuant to section 9, the Department of Agriculture, Conservation and Forestry
18 shall review those parts of the Maine Revised Statutes governing the Department of
19 Agriculture, Conservation and Forestry, including but not limited to Titles 7, 12 and
20 12-A. Based upon the review, the department shall develop and submit proposed
21 legislation for introduction to the 126th Legislature to consolidate existing law into Title
22 12-A, to update Title 12-A and to correct any errors and inconsistencies in law that result
23 from this Act.

24 **Sec. B-5. Maine Revised Statutes amended; revision clause.** Wherever in
25 the Maine Revised Statutes the words "Department of Agriculture, Food and Rural
26 Resources" or "Department of Conservation" appear or reference is made to either or both
27 of those departments with reference to the duties transferred to the Department of
28 Agriculture, Conservation and Forestry as set forth in this Act, they are amended to read
29 or mean, as the case may be, "Department of Agriculture, Conservation and Forestry."
30 The Revisor of Statutes shall implement this revision when updating, publishing or
31 republishing the statutes.

32 **Sec. B-6. Maine Revised Statutes amended; revision clause.** Wherever in
33 the Maine Revised Statutes the words "Commissioner of Agriculture, Food and Rural
34 Resources" or "Commissioner of Conservation" appear or reference is made to either or
35 both of these positions with reference to the duties transferred to the Commissioner of
36 Agriculture, Conservation and Forestry as set forth in this Act, they are amended to read
37 or mean, as the case may be, "Commissioner of Agriculture, Conservation and Forestry."
38 The Revisor of Statutes shall implement this revision when updating, publishing or
39 republishing the statutes.

40 **Sec. B-7. Maine Revised Statutes amended; revision clause.** Wherever in
41 the Maine Revised Statutes the words "Bureau of Forestry," "Bureau of Parks and Lands"
42 or "Bureau of Geology and Natural Areas" appear or reference is made to any of these
43 bureaus with reference to the duties transferred to the Department of Agriculture,

1 Conservation and Forestry as set forth in this Act, they are amended to read or mean, as
2 the case may be, "Division of Forestry," "Division of Parks and Public Lands," "Division
3 of Geology and Natural Areas" and "the division." The Revisor of Statutes shall
4 implement this revision when updating, publishing or republishing the statutes.

5 **Sec. B-8. Maine Revised Statutes amended; revision clause.** Wherever in
6 the Maine Revised Statutes the words "Division of Forest Protection" appear or reference
7 is made to the Division of Forest Protection, they are amended to read or mean "the forest
8 protection unit within the Department of Agriculture, Conservation and Forestry." The
9 Revisor of Statutes shall implement this revision when updating, publishing or
10 republishing the statutes.

11 **Sec. B-9. Budget.** The Department of Administrative and Financial Services,
12 Bureau of the Budget shall work with the employees of the Department of Agriculture,
13 Food and Rural Resources and the Department of Conservation with regard to the duties
14 transferred to the Department of Agriculture, Conservation and Forestry as set forth in
15 this Act to develop the budget for the Department of Agriculture, Conservation and
16 Forestry in conjunction with the Natural Resources Service Center of the Department of
17 Administrative and Financial Services.

18 **Sec. B-10. Federal approval.** If the Commissioner of Agriculture, Conservation
19 and Forestry determines that federal approval will not be obtained for any part of this Act
20 that requires federal approval, the commissioner shall notify the joint standing committee
21 of the Legislature having jurisdiction over agriculture, conservation and forestry matters,
22 the joint standing committee of the Legislature having jurisdiction over appropriations
23 and financial affairs and the Executive Director of the Legislative Council.

24 **Sec. B-11. Functions and duties; rules, guidelines, policies and manuals.**
25 Notwithstanding any provision of law to the contrary, the divisions established within the
26 Department of Agriculture, Conservation and Forestry pursuant to the Maine Revised
27 Statutes, Title 12-A, section 205 shall assume the functions and the duties of the bureaus,
28 divisions and offices within the former Department of Agriculture, Food and Rural
29 Resources and the former Department of Conservation in accordance with all rules,
30 guidelines, policies, manuals and similar documents adopted by or distributed by either
31 the former Department of Agriculture, Food and Rural Resources and the former
32 Department of Conservation that are in effect on the effective date of this Act. These
33 rules, guidelines, policies, manuals and similar documents remain in effect until
34 rescinded, revised or amended, without regard to references therein to departmental
35 offices, bureaus, divisions, units or employee titles or classifications that may no longer
36 exist or that may be changed in the future.

37 **PART C**

38 **Sec. C-1. 5 MRSA §7-B,** as amended by PL 2003, c. 688, Pt. A, §1, is further
39 amended to read:

1 **§7-B. Use of state vehicles for commuting**

2 A state-owned or state-leased vehicle may not be used by any employee to commute
3 between home and work, except for those vehicles authorized and assigned to employees
4 of the Baxter State Park Authority and to law enforcement officials within the following
5 organizational units: Bureau of State Police; Maine Drug Enforcement Agency; Office of
6 the State Fire Marshal; the division within the Department of Public Safety designated by
7 the Commissioner of Public Safety to enforce the law relating to the manufacture,
8 importation, storage, transportation and sale of all liquor and to administer those laws
9 relating to licensing and collection of taxes on malt liquor and wine; Bureau of Motor
10 Vehicles; Bureau of Marine Patrol; ~~Bureau of Forestry, Division of Forest Protection~~ the
11 forest protection unit within the Division of Forestry; Bureau of Warden Service; and
12 ~~Bureau of Parks and Lands~~ Division of Parks and Public Lands.

13 **Sec. C-2. 5 MRSA §1582, sub-§4**, as amended by PL 2011, c. 1, Pt. S, §1, is
14 further amended to read:

15 **4. Use of savings; personal services funds.** Savings accrued from unused funding
16 of employee benefits may not be used to increase services provided by employees.
17 Accrued salary savings generated within an appropriation or allocation for Personal
18 Services may be used for the payment of nonrecurring Personal Services costs only
19 within the account where the savings exist. Accrued savings generated from vacant
20 positions within a General Fund account's appropriation for Personal Services may be
21 used to offset Personal Services shortfalls in other General Fund accounts that occur as a
22 direct result of Personal Services appropriation reductions for projected vacancies, and
23 accrued savings generated within a Highway Fund account's allocations for Personal
24 Services may be used to offset Personal Services shortfalls in other Highway Fund
25 accounts that occur as a direct result of Personal Services allocation reductions for
26 projected vacancies; except that the transfer of such accrued savings is subject to review
27 by the joint standing committee of the Legislature having jurisdiction over appropriations
28 and financial affairs. Costs related to acting capacity appointments and emergency,
29 unbudgeted overtime for which it is impractical to budget in advance may be used with
30 the approval of the appointing authority. Other actions such as retroactive compensation
31 for reclassifications or reallocations and retroactive or one-time settlements related to
32 arbitrator or court decisions must be recommended by the department or agency head and
33 approved by the State Budget Officer. Salary and employee benefits savings may not be
34 used to fund recurring Personal Services actions either in the account where the savings
35 exist or in another account. At the close of each fiscal year, except for the ~~Division of~~
36 ~~Forest Protection~~ forest protection unit account within the Department of Agriculture,
37 Conservation and Forestry, the Disproportionate Share - Riverview Psychiatric Center
38 and the Disproportionate Share - Dorothea Dix Psychiatric Center accounts within the
39 Department of Health and Human Services and the Education in the Unorganized
40 Territory account within the Department of Education, any unexpended General Fund
41 Personal Services appropriations to executive branch agencies including accounts that are
42 authorized to carry unexpended balances forward must lapse to the Salary Plan program,
43 General Fund account in the Department of Administrative and Financial Services.

1 Commissioner of Administrative and Financial Services;
2 Commissioner of Education;
3 Commissioner of Environmental Protection;
4 Executive Director of Dirigo Health;
5 Commissioner of Public Safety;
6 Commissioner of Professional and Financial Regulation;
7 Commissioner of Labor;
8 ~~Commissioner of Agriculture, Food and Rural Resources;~~
9 Commissioner of Inland Fisheries and Wildlife;
10 Commissioner of Marine Resources;
11 Commissioner of Corrections;
12 Commissioner of Economic and Community Development;
13 Commissioner of Defense, Veterans and Emergency Management; and
14 Executive Director, Workers' Compensation Board.

15 **Sec. D-2. 2 MRSA §6, sub-§3**, as amended by PL 2011, c. 380, Pt. WWW, §1, is
16 further amended to read:

17 **3. Range 89.** The salaries of the following state officials and employees are within
18 salary range 89:

19 Director, Bureau of General Services;
20 Director, Bureau of Alcoholic Beverages and Lottery Operations;
21 State Budget Officer;
22 State Controller;
23 ~~Director of the Bureau of Forestry;~~
24 Director, Division of Forestry;
25 Director, State Planning Office;
26 Director, Energy Resources Office;
27 Director of Human Resources;
28 ~~Director, Bureau of Parks and Lands;~~
29 Director, Division of Parks and Public Lands;
30 Director of Econometric Research; and
31 Director of the Governor's Office of Communications.

32 **Sec. D-3. 2 MRSA §6, sub-§5**, as amended by PL 2005, c. 405, Pt. D, §4, is
33 further amended to read:

- 1 and Rural Resources, or of Title 12, which sets forth the laws and policies implemented
- 2 by the current Department of Conservation; and
- 3 3. It eliminates one commissioner position.