

MAINE STATE LEGISLATURE

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N I N E T I E T H L E G I S L A T U R E

Legislative Document

No. 64

H. P. 99

House of Representatives, January 15, 1941.

Referred to Committee on Judiciary and sent up for concurrence. 1,000 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Payson of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT Amending Certain Laws to Limit the Powers of the Council.

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

Sec. 1. Certain laws relating to the council amended. The designated parts of the following enumerated provisions of law are in each case hereby amended by striking therefrom the words "and council" wherever said words occur in that sequence:

revised statutes c.	2,	sec.	85
"	"	c. 125,	" 56
"	"	c. 18,	" 15, last paragraph
"	"	c. 18,	" 20, 1st sentence
"	"	c. 39,	" 1, 4th sentence
"	"	c. 39,	" 8
"	"	c. 125,	" 19, as amended
"	"	c. 58,	" 9, as amended, last sentence
"	"	c. 19,	" 133, 1st sentence
"	"	c. 19,	" 179
"	"	c. 19,	" 105, paragraph I, as amended
"	"	c. 19,	" 105, paragraph II, as amended
"	"	c. 19,	" 168
"	"	c. 38,	" 13

revised statutes	c. 125, sec. 23, as amended
“	“ c. 11, “ 1
“	“ c. 11, “ 9
“	“ c. 11, “ 78, as amended
“	“ c. 11, “ 90
“	“ c. 15, “ 20
“	“ c. 2, “ 62
“	“ c. 60, “ 76
“	“ c. 62, “ 1, as amended, 5th sentence
“	“ c. 125, “ 21, as amended
“	“ c. 5, “ 71
public laws	1931, c. 216, art. I, sec. 5
“	“ 1931, c. 216, art. II, sec. 12
“	“ 1931, c. 216, art. V, sec. 2
“	“ 1939, c. 170
“	“ 1933, c. 158, sec. 1
“	“ 1933, c. 1, sec. 20
“	“ 1939, c. 223, sec. 3
“	“ 1939, c. 223, sec. 4
“	“ 1939, c. 223, sec. 7, 2nd paragraph
“	“ 1935, c. 130, sec. 4
“	“ 1935, c. 130, sec. 6
“	“ 1935, c. 130, sec. 7

Sec. 2. P. L. 1931, c. 216, art. I, § 3, amended. The 1st sentence of the last paragraph of section 3 of article I of chapter 216 of the public laws of 1931, as amended, is hereby amended to read as follows:

‘The heads of departments may employ such bureau chiefs, deputies, assistants and employees as may be necessary, with the approval of the governor ~~and council~~ and subject to the provisions of the personnel law.’

Sec. 3. P. L. 1931, c. 216, art. I, § 4, amended. Section 4 of article I of chapter 216 of the public laws of 1931 is hereby amended to read as follows:

‘**Sec. 4. Salaries.** The heads of the departments ~~and bureau chiefs~~ established by this act shall receive such compensation as shall be fixed by the governor and council. **The bureau chiefs shall receive such compensation as shall be fixed by the department head with the approval of the governor.**’

Sec. 4. R. S., c. 2, § 117, amended. Section 117 of chapter 2 of the revised statutes is hereby amended to read as follows:

'Sec. 117. Transfers of unexpended appropriations on recommendation of commissioner of finance. Any balance of any appropriation or subdivision of an appropriation made by the legislature for any state department or institution, which at any time may not be required for the purposes named in such appropriation or subdivision may, upon recommendation of the ~~state auditor~~ **department of finance**, be transferred by the governor ~~and council~~ to any other appropriation or subdivision of an appropriation made by the legislature for the use of the same department or the same institution for the same fiscal year.'

Sec. 5. P. L., 1935, c. 13, § 2, amended. Section 2 of chapter 13 of the public laws of 1935 is hereby amended to read as follows:

'Sec. 2. Milk control board created. Within 7 days from the effective date of this act, the governor with the advice and consent of the council, shall appoint as members of a "milk control board" 2 producers, a dealer and a producer-dealer all of whom shall be residents of the state. The commissioner of agriculture shall be ex officio a member of said board. The members of said board shall elect a chairman and may employ a secretary and such clerks and assistants as may be deemed necessary and may prescribe their duties ~~and fix their compensation~~, subject to the approval of the governor ~~and council~~, **and the provisions of the personnel law.** Legal services and the services of experts in other lines shall be performed as far as possible by the existing state departments including the department of agriculture, the department of health and welfare, and the attorney general's department. Any vacancy in the membership of said board shall be filled by appointment by the governor, with the advice and consent of the council. Members of the board shall be allowed actual traveling and other necessary expenses incurred in the performance of their duties and each member shall receive a per diem compensation for the time actually spent in the performance of his duties, such compensation to be determined by the governor ~~and council~~; provided that the cost of administration of said board, including expenses and compensation of members, shall not exceed the amount of fees collected under the provisions of this act. The board shall be furnished a suitable office in the state capitol together with all necessary equipment and supplies therefor.'

Sec. 6. R. S., c. 38, § 1, amended. Section 1 of chapter 38 of the revised statutes is hereby amended to read as follows:

'Sec. 1. Commissioner and deputy commissioner of inland fisheries and

game; appointment; term; reports. A commissioner of inland fisheries and game, and a deputy recommended in writing by him, shall be appointed by the governor with the advice and consent of the council, ~~the commissioner~~ to hold office for 3 years, and ~~the deputy during the pleasure of the commissioner recommending him; and each shall serve until his successor is appointed and qualified.~~ **The commissioner shall appoint a deputy to serve during his pleasure, with the approval of the governor.** The commissioner shall make a report to the governor on or before the 30th day of June of each year, for the year ending December 31st prior thereto.'

Sec. 7. R. S., c. 38, § 12, amended. The 1st sentence of section 12 of chapter 38 of the revised statutes, as amended, is hereby further amended to read as follows:

'Sec. 12. Inland fish and game wardens; appointment, powers and duties; tenure; bond; service of processes. The governor, ~~with the advice and consent of the council,~~ upon recommendation of the commissioner of inland fisheries and game, may appoint suitable persons as inland fish and game wardens, in accordance with the provisions of sections 13-A to 13-H, inclusive, and who shall hold office under the conditions set forth in said sections, who shall enforce all laws relating to inland fisheries and game, and all rules and regulations in relation thereto, arrest all violators thereof, and prosecute all offenses against the same; said inland fish and game wardens shall have the same power to serve criminal processes against such offenders, and to arrest and prosecute camp trespassers, or those suspected of larceny from any cottage, camp, or other building, and shall be allowed the same fees as sheriffs and their deputies, for like services; (all such fees being paid to the commissioner of inland fisheries and game) and they shall have the same right as sheriffs to require aid in executing the duties of their office.'

Sec. 8. R. S., c. 11, § 2, amended. Section 2 of chapter 11 of the revised statutes is hereby amended to read as follows:

'Sec. 2. To receive moneys arising from land and attend personally to the duties of his office; no commission allowed; traveling expenses to be paid; number of his clerks and their pay. He shall receive all moneys and securities accruing to the state from the sale of lands, timber, and grass, or in payment for timber or grass cut by trespassers, and shall pay to the treasurer of state all moneys so received and found due from him on settlement. All securities shall be made payable to said treasurer. He shall personally attend to the duties of his office, so far as practicable; no com-

mission shall be allowed him for his disbursements or collections, and nothing shall be allowed him for traveling expenses from his home to the forest commissioner's office, unless on official business, nor for transportation of the official records, unless money is paid out specifically therefor. All persons employed by him shall be sworn to the faithful discharge of their duties, and they shall not be concerned directly or indirectly in the purchase of lands, or of timber or grass on lands belonging to the state. The number of his clerks shall be determined by the governor, ~~and council, who shall fix their compensation.~~ **All employees, other than officers and employees of the Maine forestry district, shall be subject to the provisions of the personnel law.'**

Sec. 9. R. S., c. 2, § 94, amended. Section 94 of chapter 2 of the revised statutes is hereby amended to read as follows:

'Sec. 94. Governor and council may require a new bond. When it appears to the governor ~~and council~~ that his bond is not sufficient for the full security of the state, ~~they~~ **he** shall make written demand upon him for a new bond; and if he neglects for 10 days thereafter to file such bond to ~~their~~ **the governor's** satisfaction, ~~they~~ **he** shall remove him and declare the office vacant.'

Sec. 10. R. S., c. 2, § 61, amended. Section 61 of chapter 2 of the revised statutes is hereby amended to read as follows:

'Sec. 61. Bond. The secretary, elected or appointed, shall give bond to the state, to be deposited in the office of the treasurer, in such sum as the governor ~~and council~~ directs, with sufficient sureties, or with a surety company authorized to do business in the state, as surety, with condition that he will faithfully appropriate according to law all moneys belonging to the state which come to his hands, and render, annually, a true account thereof to the governor ~~and council.~~'

Sec. 11. R. S., c. 60, § 83, amended. Section 83 of chapter 60 of the revised statutes is hereby amended to read as follows:

'Sec. 83. Commissioner, appointment, term, and duties; appointment and duties of deputy commissioner. An insurance commissioner, whose office shall be at the state capitol, shall be appointed by the governor and council, and shall hold his office for four years, and until his successor has been appointed and qualified, but shall not at the same time be bank commissioner. He may administer oaths in the performance of his official duties, in any part of the state and at any time. He shall keep a correct account of all his doings, and of all fees and moneys received by him by

virtue of his office, pay over the same to the treasurer of state quarterly and at the same time settle his account with the governor ~~and council~~. He shall give bond to the treasurer, in the sum of five thousand dollars, for the faithful discharge of his duties. He may with the approval of the governor ~~and council~~, appoint and with ~~their~~ **his** consent remove, a deputy commissioner who by virtue of such appointment, shall be and perform the duties of chief clerk of the department. In the event of a vacancy in the office of the insurance commissioner or during the absence or disability of that officer, the deputy insurance commissioner shall perform the duties of the office.'

Sec. 12. P. L., 1933, c. 300, § 3, amended. The last paragraph of section 3 of chapter 300 of the public laws of 1933 is hereby amended to read as follows:

'Said commission may employ, subject to the approval of the governor ~~and council~~ **and subject to the provisions of the personnel law**, such clerical and other assistants, and make such expenditures, as may be necessary to carry into effect the purposes of this act, and subject to the same approval may fix the compensation of ~~all such employees or assistants~~ **its official clerk**. ~~All appointments of individuals as employees or agents of the commission shall take effect only on confirmation of the governor and council.~~

Sec. 13. P. L., 1937, c. 237, § 24, as amended by P. L., 1937, c. 247, amended. The 1st sentence of section 24 of chapter 237 of the public laws of 1937 as amended by chapter 247 of the public laws of 1937 is hereby further amended to read as follows:

'The liquor commission shall appoint, subject to the approval of the governor ~~and council~~ **and subject to the provisions of the personnel law**, a chief inspector, and as many inspectors as may from time to time be found necessary, to serve during the pleasure of the liquor commission, ~~whose compensation shall be fixed by the liquor commission subject to the approval of the governor and council.~~

Sec. 14. P. L., 1933, c. 1, § 1, amended. The 2nd paragraph of section 1 of the public laws of 1933 is hereby amended to read as follows:

'The head of the department shall be the commissioner of health and welfare who shall be appointed by the governor with the advice and consent of the council to serve for 3 years, or during the pleasure of the said governor and council. Any vacancy shall be filled by appointment as above for a like term. He may employ such bureau chiefs, deputies, assistants, and employees as may be necessary to carry out the work of the depart-

ment with the approval of the governor ~~and council~~ and subject to the provisions of the personnel law; and they shall be under the immediate supervision, direction and control of the commissioner. The compensation of the commissioner ~~and his bureau chiefs~~ shall be fixed by the governor and council. **The compensation of bureau chiefs shall be fixed by the commissioner with the approval of the governor.'**

Sec. 15. P. L., 1939, c. 223, § 5, amended. Section 5 of chapter 223 of the public laws of 1939 is hereby amended to read as follows:

'Sec. 5. Salaries. The salary of the commissioner, ~~the director and all other employees established under this act shall receive such compensation~~ as shall be fixed by the governor and council. **The director and each institutional head shall receive such compensation as shall be fixed by the commissioner with the approval of the governor. All other employees shall be subject to the provisions of the personnel law.'**

Sec. 16. P. & S. L., 1935, c. 177, § 1, amended. Section 1 of chapter 177 of the private and special laws of 1935 is hereby amended to read as follows:

'Sec. 1. Supervision of construction under bureau of institutional service. The director of the bureau of institutional service shall employ, with the advice and consent of the governor ~~and council~~, a supervisor of construction, who shall be a full time employee of the state and whose compensation shall be fixed, as now provided by law, ~~by the governor and council.'~~

Sec. 17. R. S., c. 55, § 28, amended. The 4th paragraph of section 28 of chapter 55 of the revised statutes is hereby amended to read as follows:

'The commission shall have a clerk and a reporter, appointed and removable by it, who shall be sworn to the faithful performance of their duties. Their salaries shall be fixed by ~~the governor and council upon recommendation of the commission~~ in accordance with the provisions of the personnel law.'

Sec. 18. P. & S. L., 1937, c. 105, Title II, § 1, amended. Section 1 of title II of chapter 105 of the private and special laws of 1937 is hereby amended to read as follows:

'Sec. 1. Department of health and welfare to administer old age assistance. The department of health and welfare shall administer the carrying out and enforcement of the provisions of law relating to old age assistance. It is hereby empowered to employ such assistants as may be necessary to

carry out the provisions of this act, subject to the approval of the governor ~~and council~~, and subject to the provisions of the personnel law and to coordinate their work with that of the other social welfare work of the department.'

Sec. 19. P. L., 1935, c. 144, § 2, amended. Subsection (j) of section 2 of chapter 144 of the public laws of 1935 is hereby amended to read as follows:

'(j) To fix the qualifications and duties of, and to employ permanently or part time, such employees and other personnel as the commission may from time to time deem necessary in the discharge of its duties under this act; ~~salaries, fees and other compensation to be fixed by the governor and council~~ such employment and the compensation paid shall be subject to the provisions of the personnel law.'

Sec. 20. R. S., c. 2, § 57, amended. Section 57 of chapter 2 of the revised statutes is hereby amended to read as follows:

'**Sec. 57. Officers to give new bonds when required, or office deemed vacant.** The governor ~~and council~~ may require any officer who by law gives bond to the state to give a new bond when ~~they~~ he considers it necessary; and when it is given, the obligors in the former bond are discharged from liability thereon for acts and defaults after the acceptance of the new one; and if such officer does not give a new and satisfactory bond within the time specified by the governor ~~and council~~, his office becomes vacant, and shall be filled as provided by law.'

Sec. 21. R. S., c. 57, § 2, amended. The 1st paragraph of section 2 of chapter 57 of the revised statutes is hereby amended to read as follows:

'The bank commissioner may employ at the expense of the state a deputy bank commissioner and as many examiners, assistant examiners, and clerks as the business of the office may require, ~~whose compensation shall be fixed by the governor and council~~ subject to the approval of the governor and to the provisions of the personnel law. The deputy bank commissioner shall perform the duties of the commissioner whenever the latter shall be absent from the state or whenever he shall be directed by the commissioner, or whenever there shall be a vacancy in the office of commissioner. The deputy bank commissioner and all examiners and assistant examiners shall receive their actual expenses incurred in the performance of official duties, subject to the approval of the governor ~~and council~~.'

Sec. 22. R. S., c. 57, § 159, amended. Section 159 of chapter 57 of the revised statutes is hereby amended to read as follows:

'Sec. 159. Examiner to be appointed to enforce law; compensation. For the enforcement of the provisions of sections 143 to 161, inclusive, the bank commissioner is authorized to appoint an examiner **in accordance with the provisions of section 2 of this chapter**, ~~the amount of his compensation to be subject to the approval of the governor and council, who shall also receive his necessary travelling expenses.~~ The salary and travelling expenses **of the examiner**, before mentioned, and all expenses of the administration and enforcement of said sections shall be paid out of the appropriation for that purpose and the fees received from licenses issued under the provisions of said sections.'

Sec. 23. P. L., 1935, c. 192, § 11, amended. Subsection (d) of section 11 of chapter 192 of the public laws of 1935 is hereby amended to read as follows:

'(d) Personnel. Subject to other provisions of this act **and the provisions of the personnel law**, the commission is authorized to appoint, ~~and fix the compensation~~ subject to the approval of the governor ~~and council~~, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. On request of the commission the attorney general shall represent the commission and the state in any court action relating to this act or to its administration and enforcement; provided, however, that special counsel may be designated by the attorney general at the request of the commission whose services and expenses subject to approval by the governor ~~and council~~ shall be paid from the funds provided for the administration of this act. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis. The commission shall not employ or pay any person who is an officer or committee member of any political party organization. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling money or signing checks hereunder.'

Sec. 24. R. S., c. 29, § 122, as amended, further amended. Section 122 of chapter 29 of the revised statutes, as amended, is hereby further amended to read as follows:

'Sec. 122. Appointment of the chief of the state police; duties, may enlist members of the force; terms and conditions of enlistment; deputy chief. The governor, with the advice and consent of the council, shall appoint a chief of the state police, to serve for a term of 4 years unless removed for cause. He may be removed by the governor and council only

after charges have been preferred in writing and, if he so requests, after public hearing. The chief shall be the executive head of the state police and shall execute the duties of his office under the direction and subject to the approval of the governor ~~and council~~. The chief of the state police may enlist suitable persons as members of the state police to enforce the provisions of this chapter, who shall enlist for a period of 3 years: (a) during the first 6 months of the 1st enlistment a member will be on probation and may be summarily discharged by the chief without hearing; (b) a qualified and accepted recruit will take the oath to be prescribed by regulations of the department and such oath shall be set out in the enlistment paper. Each accepted recruit shall sign such paper and expressly agree to abide by and be subject to all the conditions and obligations therein set forth; (c) after the first 6 months of the 1st enlistment period members may be discharged only after trial before a trial court to be designated by the chief of the said state police; (d) members may be discharged on their own request if deemed consistent with the good of the service by the chief; (e) voluntary withdrawal from the force during the term of enlistment or re-enlistment without the consent of the chief shall constitute a misdemeanor; (f) the chief shall make rules and regulations subject to the approval of the governor ~~and council~~ for the discipline and control of members of the state police and for the examination and qualification of applicants for enlistment therein and violation of any rules and regulations, approved as aforesaid, by any member of the state police shall constitute a misdemeanor. Subject to the approval of the governor ~~and council~~, the chief may designate a member of the state police to act as his deputy.'

Sec. 25. P. L., 1933, c. 1, § 288, as amended by P. L., 1933, c. 146, § 2, amended. Section 288 of chapter 1 of the public laws of 1933 as amended by section 2 of chapter 146 of the public laws of 1933 is hereby further amended to read as follows:

'Sec. 288. Supervision of schools at Pleasant Point and at Peter Dana's Point; reports and compensation of superintendent; teaching in English and use of text-books; free tuition in high schools. The school at the Pleasant Point reservation shall be under the care and supervision of the superintendent of schools of the town of Perry or of the school union of which Perry may be a member. The school at Peter Dana's Point shall be under the care and supervision of the superintendent of schools of the town of Princeton, or of the school union of which Princeton may be a member. All subjects shall be taught in the English language, and the text-books used shall be the same as those used in the town in which said schools are located. Said superintendents shall visit said schools at least

4 times during each school term; regulate the grades and courses of study; assist the teachers and scholars by counsel, or discipline; and make report once each year to the agent and to the governor ~~and council~~, noting therein such facts and information as may seem of importance in the interest of education among the Indians of said reservation, or as may be required by the governor ~~and council~~. The governor ~~and council are~~ is hereby authorized to pay said superintendents reasonable compensation for said services; but the compensation shall not be less than \$100 in each case, and shall be paid out of the state fund for the superintendence of school unions. Whenever it shall be shown that any of the children of the Passamaquoddy tribe shall have completed the course of study for elementary schools as prescribed or shall have passed the examination prepared by the state commissioner of education for entrance into high school, such children shall be granted entrance to any high school in the state to which said children may apply under the same conditions as pupils residing in towns that do not maintain a free high school, as provided in section 93 of chapter 19, except that tuition for such pupils shall be paid by the department of health and welfare, from Indian funds. Said tuition shall be based on the average instructional cost per pupil for the year preceding that for which the tuition is paid.'

Sec. 26. P. L., 1933, c. 2, § 12, amended. Section 12 of chapter 2 of the public laws of 1933 is hereby amended to read as follows:

'Sec. 12. Appointment of inspectors of fish; term. In each town where pickled fish are cured or packed for exportation the governor ~~with the advice and consent of the council~~, shall, from time to time, as occasion requires, appoint 1 or more persons knowing the quality of the same, to be inspectors of fish, who shall hold their office for 5 years, unless sooner removed by the governor ~~and council~~.'