

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

One Hundred and Seventh Legislature

AT THE

1ST SPECIAL SESSION

JANUARY 19, 1976 TO APRIL 29, 1976

AND

2ND SPECIAL SESSION

JUNE 14, 1976

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 164, SUBSECTION 6.

PORTLAND LITHOGRAPH COMPANY
PORTLAND, MAINE
1977

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
One Hundred and Seventh Legislature
AT THE FIRST SPECIAL SESSION
January 19, 1976 to April 29, 1976
AND THE SECOND SPECIAL SESSION
June 14, 1976

Supplementary to the Acts and Resolves of the Regular Session

[supplied from page 3097 of volume]

Whereas, the Mearl Corporation has suffered a disastrous loss by the synthetic manufacture of pearl essence by a new method, pearl essence which the Mearl Corporation had been making from fish scales, necessitating the "lay off" of many employees; and

Whereas, the Mearl Corporation has found a method of processing mackerel for food consumption by canning; and

Whereas, the problem is to secure a source of mackerel in a sufficiently large quantity to insure the successful operation of the project, thereby putting these workers back on their jobs; and

Whereas, an emergency preamble is necessary to enable the plant to start operating on the spring run of fish; 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:

12 MRSA § 4209, as enacted by PL 1969, c. 253, is amended by adding at the end a new paragraph to read:

This section shall not apply to the seining of mackerel in the territorial waters of Washington County.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective March 30, 1976

CHAPTER 686

AN ACT to Revise the Personnel System.

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

Sec. 1. 5 MRSA § 556, first ¶, as last repealed and replaced by PL 1973, c. 723, § 2, is amended to read:

Employment in the classified service shall be open to all qualified persons who have been residents of the State of Maine for at least 6 months immediately preceding ~~said~~ that employment, except that at the request of the appointing authority the residence requirement may be waived by the ~~Personnel Board~~ Director of Personnel in exceptional or emergency cases when such action is necessary for the good of the service.

Sec. 2. 5 MRSA § 592, as amended by PL 1973, c. 625, § 20, is repealed and the following enacted in place thereof:

§ 592. Powers and duties

The State Personnel Board shall review the personnel policies and personnel administration of the State and make such recommendations and render advice relative to the operation of the state's personnel administration, as they deem advisable, to the Director of Personnel. A record of these recommendations and advice shall be maintained by the director. Within a reasonable time after the filing of such recommendation or advice, the director shall make a written response to the board and file a copy of that response with the Governor.

Sec. 3. 5 MRSA § 593 is enacted to read:

§ 593. Appeals to the board

Any employee or appointing authority aggrieved by the determination of the Director of Personnel concerning the classification of positions, the allocation of new positions or the reallocation of existing positions in the classified service may appeal from such determination to the State Personnel Board. Such appeal must be made within 30 days after receipt of written notice of such determination from the director. Such employee or appointing authority, or his representative, shall be afforded a public hearing before the board with an opportunity to present facts and arguments in support of or in relation to such appeal at a time and place and in such manner as may be prescribed by the board. The board shall examine and review such appeal and, upon the vote of at least 3 of its members, make such changes in classification, allocation or reallocation as may be just and equitable. Determinations of the board shall be transmitted to the State Budget Officer, the Director of Personnel and the employees and department heads affected thereby.

Any classification of a position and any allocation or reallocation of a position made by the director or the State Personnel Board pursuant to this section shall become effective on the first day of the fiscal year following approval by the State Budget Officer and the appropriation of funds therefor, except that the State Budget Officer may, if he determines that sufficient funds exist, authorize an effective date prior to the first day of the ensuing fiscal year.

Sec. 4. 5 MRSA § 631 is repealed and the following enacted in place thereof:

§ 631. Qualifications; tenure; powers and duties

The Director of Personnel shall be, at the time of his appointment, a person thoroughly familiar with the principles and experienced in the methods and techniques of personnel administration and management. After consultation with the Personnel Board, the Governor shall appoint, subject to the advice and consent of the Executive Council, the Director of Personnel who shall serve a term coterminous with that of the Governor or until his successor has been appointed and qualified. Effective January 4, 1977, the preceding sentence shall be deleted and replaced by the following: After consultation with the Personnel Board, the Governor shall appoint, subject to review by the Joint Standing Committee on State Government and to confirmation by the Legislature, the Director of Personnel who shall serve a term coterminous

with that of the Governor or until his successor has been appointed and qualified.

The director shall have the following powers and duties :

1. Rules and regulations. After a public hearing, and subject to the requirements of chapters 51 to 67, to prescribe or amend rules and regulations relative to :

- A. Eligible registers ;
- B. Classification of positions in the classified service ;
- C. Compensation plan ;
- D. Examination for admission to the classified service ;
- E. Promotion in the classified service ;
- F. Provisional, emergency, exceptional and temporary appointments ;
- G. Probationary period ;
- H. Transfer ;
- I. Reinstatement ;
- J. Demotion ;
- K. Suspension, layoff and dismissal ;
- L. Leave of absence, resignation, hours of service, vacation and sick leave ;
- M. Personnel records ;
- N. In-service training ;
- O. Service ratings ; and
- P. Certification of payrolls ;

which rules and regulations shall be in effect and have the force of law upon the approval of the Governor ;

2. Investigations. To make investigations either at the direction of the Governor or the Legislature, or upon the petition of an employee or a citizen, or on his own motion concerning the enforcement and effect of chapters 51 to 67 ;

3. Enforcement. To enforce the observance of chapters 51 to 67 and the rules and regulations made thereunder ;

4. Report. To transmit an annual report to the Governor. The report of

the director may be supplemented by any additional comment, criticism or suggestions for the more effectual accomplishment of the purposes of chapters 51 to 67 that the board may care to submit;

5. Minutes. To keep full and complete minutes of his hearings relative to prescribing or amending the personnel rules and hearings conducted either by himself or the Personnel Board on matters of classification, reclassification or allocation. The minutes of these hearings shall be open to public inspection;

6. Hearings. In the course of any investigations under chapters 51 to 67, to have the power to administer oaths and to subpoena and require the attendance of witnesses and the production thereby of books, papers, public records and other documentary evidence pertinent to such investigation.

In case of the refusal of any person to comply with any subpoena issued hereunder or to testify to any matter regarding which he may be lawfully interrogated, the Superior Court in any county on application of the director may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof; and

7. Organization and decentralization. To organize the department and separate it into such divisions and along such functional lines as the director may deem most efficient and may decentralize the functions of personnel management among the various departments and agencies of the State as he deems in the best interest of efficient administration and to perform those functions which are not decentralized.

Sec. 5. 5 MRSA § 672 is amended to read:

§ 672. Filling of positions

Positions in the classified service shall be filled by original appointment, promotion, transfer, reinstatement or demotion in pursuance of rules and regulations established by the board and administered by the director.

Sec. 6. 5 MRSA § 673, as amended by PL 1973, c. 723, § 4, is further amended to read:

§ 673. Examinations

All examinations for positions in the classified service shall relate to those matters which will fairly test the capacity and fitness of the persons examined to discharge the duties of the office or employment sought by them, but due regard shall be shown for the capacity of the applicant for promotion to higher positions in the service.

The director shall determine ~~subject to the approval of the board~~ the character, type and content of examination for admission to the classified service; the time and place for holding examinations; the form of application blanks for admission to the examination to be filed by applicants; the minimum requirements for admission to the examination and the value of each phase of the tests used in determining the average rating of the applicant.

Public notice of the time, place and general scope or nature of every exami-

nation or test shall be given in the manner prescribed by rules and regulations drawn up by the director and approved by the board.

Sec. 7. 5 MRSA § 674, next to last ¶, as last amended by PL 1973, c. 496, § 2, is further amended to read:

In determining qualifications for examination and appointment with respect to veteran preference eligibles under this section, the board director or other examining agency may waive requirements as to age, height and weight, provided any such requirement is not essential to the performance of the duties of the position for which examination is given. The board director or other examining agency, after giving due consideration to the recommendation of any accredited physician, may waive the physical requirements in the case of any veteran, provided such veteran is, in the opinion of the board director or other examining agency, physically able to discharge efficiently the duties of the position for which the examination is given.

Sec. 8. 5 MRSA § 675, last sentence is amended to read:

Examinations shall be conducted for such applicants not later than the quarterly period succeeding that in which the application has been filed with the State Personnel Board Director of Personnel.

Sec. 9. 5 MRSA § 677, 3rd sentence is amended to read:

The director with the approval of the board may make a provisional appointment to fill a technical or professional position, which requires a specialized knowledge or training to carry out the duties of the position, and cannot be filled from the eligible register.

Sec. 10. P&SL 1975, c. 78, § 6 is amended to read:

Sec. 6. Personal services savings and flexibility. Savings accruing within appropriations made for permanent positions may be used for nonrecurring personal services or retirement costs when recommended by the department head and the State Budget Officer, and approved by the Governor and Council. To provide some degree of flexibility, each department may apply to the Personnel Board for an exchange between job classifications, and such action may be approved if by so doing the total amount determined to be made available for Personal Services, in each department, is not exceeded and also providing that certification is made, in writing, by the department head, that such action will not result in an increased request for Personal Service moneys from any future Legislature. Copies of all Personnel Board actions and department head certifications relating to such changes shall be furnished to the Legislative Finance Officer. The State Personnel Board on a continuing basis shall review all reclassification and range change requests and regularly report those which it approves in omnibus bill form to each subsequent session of the Legislature, through the Appropriations and Financial Affairs Committee, for final determination. Any classification of a position and any allocation or reallocation of a position made by the director or the State Personnel Board pursuant to this section shall become effective on the first day of the fiscal year following approval by the State Budget Officer and the appropriation of funds therefor, except that the State Budget Officer may, if he determines that sufficient funds exist, authorize an effective date prior to the first day of the ensuing fiscal year.

Sec. 11. P&SL 1975, c. 90, § 7 is repealed.

Effective July 29, 1976

CHAPTER 687

AN ACT to Promote the Sale of Maine Potatoes.

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

Sec. 1. 7 MRSA § 954-A, as enacted by PL 1965, c. 219, § 6, is amended to read:

§ 954-A. Seizure of misbranded, mislabeled or misrepresented product

Whenever the commissioner or his duly authorized representative shall find from inspection, as authorized in section 956, that potatoes are being sold, exposed for sale, or shipped for sale in containers, and the containers bear any statements, design or device regarding such potatoes which shall be false or misleading, in any particular, or if potatoes are packed in such manner that the face or shown surface is not an average of the contents of the package, or if such potatoes fail to meet the minimum grade requirements established as a state grade by the ~~Commissioner of Agriculture~~ commissioner, or if the potatoes are not accompanied by a proper bill of lading or invoice as provided by section 952, then the commissioner, or his duly authorized representative, may seize such potatoes so that they cannot be sold, offered, exposed for sale or transported ~~until such potatoes have been regraded or relabeled and accompanied by a federal state inspection certificate showing that the potatoes in such containers conform in every particular to the markings on such containers, or until a proper bill of lading or invoice is produced.~~ Any potatoes seized by the commissioner or his duly authorized representative for failure to meet the minimum grade requirements established by the commissioner shall be returned to the person, firm, or corporation responsible for packing the potatoes at the point of origin. Misbranded potatoes shall not be exposed or offered for sale or transported until such potatoes have been regraded and are accompanied by a federal-state inspection certificate showing that the potatoes meet the minimum grade requirements specified on the container.

Sec. 2. 7 MRSA § 957, as amended by PL 1965, c. 219, § 8, is repealed and the following enacted in place thereof:

§ 957. Penalties

Any person, firm or corporation who shall violate any of the provisions of sections 951 to 957 or neglect or refuse to comply with any of the provisions required therein or in any way violate any of those provisions shall be punished by a fine of not less than \$100 nor more than \$200 for the first offense, and a fine of not less than \$400 nor more than \$500 for the 2nd offense, and a fine of not less than \$1,000 for the 3rd and subsequent offenses committed during the year from September 1st to August 31st.

Effective July 29, 1976