

MAINE STATE LEGISLATURE

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REPORT
of the
JOINT STANDING COMMITTEE ON BUSINESS LEGISLATION
On its Interim Study of
THE MAINE REAL ESTATE COMMISSION

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STATE OF MAINE
ONE HUNDRED AND TENTH LEGISLATURE
COMMITTEE ON BUSINESS LEGISLATION

December 30, 1982



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METHODOLOGY

The study subcommittee held its first meeting on May 13, 1982, on the same day that the Legislature held a special session to consider, inter alia, L.D. 2151, "AN ACT to Adjust Fees for Licenses Issued by the Real Estate Commission" (PL 1981, c.707).

A subcommittee was formed to conduct the study, comprising the following members of the committee:

Rep. Joseph C. Brannigan	Sen. Roland L. Sutton
Rep. Dan A. Gwadosky	Sen. Nancy Randall Clark
Rep. Patrick T. Jackson, Jr.	Sen. Charlotte Zahn Sewall
Rep. Alfred W. Perkins	
Rep. Norman O. Racine	

Subsequently, the subcommittee proceeded to gather facts and opinions through two sets of surveys, a series of public hearings, and work sessions, in addition to research undertaken by the staff.

A. Public hearings. During the last three weeks in June, the subcommittee held public hearings in Portland, Bangor and Lewiston. Approximately 60 to 75 people attended, representing consumer and industry interests.

B. Surveys. Prior to the June hearings, postpaid surveys were sent to 134 consumers who had had complaints resolved by the commission, either favorably or unfavorably, between July 1, 1980, and May 15, 1982. Each survey was accompanied by a notice of the schedule of public hearings.

A second, general survey was distributed at the public hearings and through publication in "Real Estate UPDATE," a publication of the University of Southern Maine Center for Real Estate Education. UPDATE is distributed to real estate licensees, lawyers in the State Bar Association, legislators, builders, oil dealers, bankers, landlords and colleges.

C. Staff research. Research on various issues was performed by the staff beginning in May, 1982. Information so compiled was collected in looseleaf binders and distributed to members of the subcommittee. A copy of these collected "working papers" of the subcommittee were to be delivered to the Law and Legislative Reference Library at the State House at the conclusion of the study to serve as a reference source.

D. Work sessions; other information. The subcommittee held three work sessions at the State House in Augusta on September 22, October 18, and November 9, 1982. In addition to discussion of the results from surveys and public hearings, the legislators heard from the Maine Association of REALTORS®, the statewide industry trade association which was conducting a concurrent study of the commission, and from the commission itself.

FINDINGS AND RECOMMENDATIONS

The following represents a summary of the findings and recommendations of the study subcommittee. Legislative recommendations, considered by the full Business Legislation Committee, are contained in the study bill.

A. Administration.

Currently, the Maine Real Estate Commission (MREC) is made up of three industry members and one public member, all appointed by the Governor for staggered four-year terms, and the director. The director is appointed by the Commissioner of Business Regulation with the advice of the other appointed members.

The staff of the commission is chosen by the director pursuant to the Personnel Law, and in line with the commission's program and available funds. Due to fiscal constraints, the staff level has in recent months been reduced to three people (including the director) from a previous average of seven or eight. Staff duties are outlined in Appendix A, pages 8 through 16.

Additional services are performed by the Administrative Services and Central Licensing Divisions of the Department of Business Regulation. Legal services are provided by an Assistant Attorney General who is assigned responsibility for other agencies within the department as well. The commission is charged for all these services through the Department.

A seven-member Continuing Education Committee, consisting of one commission member and volunteers representing education (1 member), the public (1 member) and licensees (4 members), approve and monitor continuing education programs.

Finally, roles are played by other parts of state government. The Governor appoints commission members and the Commissioner of Business Regulation. Additionally, the Executive Department has an important voice in MREC's financial processes through execution of collective bargaining agreements and assessments for state expenditure items such as STA-CAP.

The Commissioner of Business Regulation, besides appointing the director, is charged with oversight of commission operations, approving expenditures, and providing other assistance.

The Administrative Court (and to some extent, other courts in the State) reviews decisions of the commission and permits enforcement of the license law.

1. Commission composition. The MREC structure is substantially the same as that of other occupational licensing and regulatory boards in Maine and elsewhere. There is a citizen's commission predominantly composed of industry members, charged with the primary responsibilities of operating the law. Unlike many such boards and commissions, however, the real estate commission:

- (a) Represents and regulates an extremely diverse group. Licensees may be inactive or part-time; may be either

brokers or salespeople; may be managers of very large firms; may be seasonal, etc.

- (b) Includes the director as a member of the commission. Although prohibited by statute from voting in many cases, the director both administers the program and acts as one of its authors.
- (c) Operates as a major consumer protection agency. The financial importance of a real estate investment, together with its complexity, leads to an enormous volume of inquiries and complaints to the commission each year. The commission occupies a unique position to mediate or otherwise resolve disputes and thus to relieve consumers, licensees, and the judicial system of burdensome civil actions.

Because of these differences, it is important that commission members adequately represent the industry, and that their competence and integrity be clearly demonstrated. Both in the surveys and at the public hearings, concerned industry members and consumers expressed this concern.

RECOMMENDATION A-1

The process of selection of real estate commission members should be designed toward assuring proper industry representation, encouraging broad participation in the selection process, and instilling public confidence in the competence and integrity of the commission.

RECOMMENDATION A-2

In order to clarify their respective duties and to assure impartiality, the director should not remain as a member of the commission.

RECOMMENDATION A-3

Because of the need for representation of diverse segments of the industry, and because commission membership is a public service which demands a substantial time commitment, the real estate commission should be composed of four industry members and one public member, each serving for a staggered three-year term, with a limit of two consecutive terms.

2. Director's duties. The director serves as the chief administrative officer of the commission. He is responsible for all day-to-day operations in budgeting, personnel, and information matters. The director must oversee investigations and licensing, prepare reports and draft decisions or rules for the commission, field questions from consumers and licensees, and keep the commission members informed of all activities. A more detailed description of the director's duties may be found in Appendix A, page 8.

Despite the fact that as a state employee, working directly and on a

daily basis with real estate regulation, the director holds a unique position from which to make quick and responsible decisions, the current structure of the commission may make this impossible. Presently, the director spends an inordinate amount of time preparing materials for bimonthly meetings of the commission, even where the end result will likely be a cursory examination of those materials, and a ratification of the director's recommendation. Given the director's membership on the commission, even this process may lead to undue influence of the director on the appointed commission membership.

The result of this current process may be that the director is precluded from performing other pressing duties, such as resolving complaints at an early date. Additionally, the public interest may not be served where a case is not pursued by a complainant and the director, as a member of the commission, is in an improper position to advocate a specific disposition (see Program Recommendation 4, infra, at 10).

RECOMMENDATION A-4

In addition to removing the director as a commission member (Rec. A-2, supra), the powers and duties of the real estate commission and its director should be statutorily circumscribed to prevent unnecessary duplication, and to promote efficiency and accountability. Policymaking, and final adjudicatory and rule-making powers should be allocated to the commission; administrative and executive powers should be allocated to the director.

Additional findings and recommendations concerning administrative functions appear throughout the remainder of this report.

B. Finances.

A major reason for commencing this study was concern expressed over license fee increases proposed in the Second Regular Session of the 110th Legislature. A modified set of fee increases was enacted as PL 1981, c. 707, in the Fifth Special Session.

MREC is financed through fees assessed against licensees for broker and salesman licenses, continuing education program approvals, examination fees, record modifications, and the like. Fees are deposited to a dedicated account called the "Real Estate Fund," and all expenses of the commission are to be paid from this fund.

Concern has been expressed that: (1) the commission has not operated responsibly with respect to finances; (2) the commission should not have taken loans during the last fiscal year from the Governor's contingency fund and the Banking Bureau; and (3) the commission has failed to economize where possible, e.g., by maintaining its own computer.

Regarding revenues, the subcommittee made the following findings and recommendation:

1. History. MREC was established in 1937. General fee increases were passed by the Legislature in 1961, 1967, 1973, 1979, and 1982.

2. Timing. The bulk of commission revenues come from licenses and renewals. Most renewals come due at the end of the fiscal year, since by 32 MRSA § 4115, licenses expire June 30. In FY 1981, 66.9% of revenues were received in the last quarter of the fiscal year; in FY 1982, it was estimated that figure would be about the same. This means that at the end of a fiscal year, MREC normally shows a substantial positive balance. This is not a "surplus," however, but a carryover balance which must be used to tide MREC over for the first three quarters of the subsequent fiscal year, when income is negligible.

3. Projection problems. A problem for both the commission and legislators is projecting the revenues expected each year. In recent years, there has been a notable decline in the number of new and renewal licenses. This is presumably due to the general condition of the economy and in particular, the problems of the real estate market. At the same time, the duties of the commission and the complexity of consumer complaints have increased; state employees have a recent collective bargaining agreement; and inflation has contributed to increased costs. The result has been an indefinite, unpredictable downward trend in revenues and a similarly erratic upswing in expenditures.

4. Interstate Fee Level Comparisons. According to the 1981 Report of the National Association of Real Estate License Law Officials (NARELLO), Maine's \$60 biennial broker license fee is:

EQUAL to that charged in 10 other states; and
LESS THAN that charged in 14 states and D.C.

The mean annual broker license renewal fee for the 50 states and the District of Columbia is \$29.79, as compared to the annual level of \$30 in Maine. The New England average is \$42.50.

5. Revenue sources. In 42 states and the District of Columbia, real estate boards and commissions receive some or all funding through appropriations; that is not the case in Kentucky, Louisiana, Maine, North Carolina, North Dakota, Oklahoma, South Dakota and Wyoming.

In Maine, some agencies, such as the Bureaus of Banking and Insurance, receive limited assistance from the General Fund to cover items such as salary and expenses of the respective Superintendents.

Presently, the Maine Real Estate Transfer Tax brings the General Fund approximately \$800,000 to \$900,000 annually through a tax of 55¢ levied on each \$500 of consideration in a transfer. None of this currently goes to MREC.

RECOMMENDATION F-1

While based on current projections it is felt that the current fee structure should adequately fund the real estate commission in the near future (see Appendix A, esp. page 6), the Legislature should start to examine alternate sources of funding. Because the real estate commission, unlike many occupational licensing boards, carries on a significant amount of activity in consumer protection, including the investigation and prosecution

of alleged licensee misconduct, contribution from the public should be considered. Two promising possibilities include: (a) a contribution from the General Fund to cover the salary and expenses of the director; and (b) dedication of a percentage of the Real Estate Transfer Tax to the commission's revenue account, perhaps accompanied by an increase in the rate of the tax.

With regard to expenditures, the subcommittee made the following findings:

1. Accountability. While some expenses are within the control of the commission, e.g., staff levels, a surprising amount of the MREC budget is substantially controlled by other parties. A few examples are as follows.

(a) STA-CAP [4.7% of FY 1981 expenditures]. This fee, determined by the budget office, is supposed to cover MREC's share of the general cost of state government, including such items as rent, personnel and payroll services, insurance and purchasing services. Only during the course of this study did it become apparent to MREC staff that the FY 1983 assessment for STA-CAP would be based on FY 1981 experience, and that for example, a purchase order results in an assessment of about \$35, regardless of the cost of the item. This new knowledge may help MREC to exercise some limited control over this item in future years.

(b) DBR Support Services (Administrative Services and Central Licensing) [8.4% of FY 1981 expenditures]. These assessments are determined at the Department level, and include such items as contributions toward the lease-purchase of the computer facility. A disturbing footnote in this regard is that unbudgeted items, such as repairs to the computer, are billed to MREC and may fall under the "Operating Cost" category, so that the 8.4% figure noted above may not reflect total costs of these services.

(c) Payroll & Benefits [61.3% of FY 1981 expenditures]. This is the principal expense of the commission, and one subject to the most control by MREC, e.g., by altering staff levels. However, control is limited even here since the Personnel Law and collective bargaining agreements may have sudden and dramatic impacts on the commission budget. For example, whereas a retroactive settlement in other departments will carry a price tag and be covered by an appropriation, in the case of an agency with dedicated revenues, that retroactive settlement must come out of current funds.

2. Coordination. The subcommittee found that there has been a lack of coordination of functions which has sometimes contributed to higher costs. To some extent, the administrative changes recommended in the study bill may make greater coordination possible, at least within MREC itself. Specific instances of the problem in recent years include the following.

(a) STA-CAP. As noted above, there has been until this study a lack of awareness at the commission of the components of this assessment. Presumably, this new awareness will allow more efficient planning in the future.

(b) Central Licensing. In FY 1981, MREC contributed over 24% of the Central Licensing Division's payroll and operating costs, and over 22% of the costs of the base purchase and word processing costs. However, current procedures tend to make many processes actually more time-consuming through the Division than they would otherwise be; and to date, MREC has made no use of the word processing capacity. Once again, these problems are now being addressed by the commission; e.g., it is anticipated that the installation of a terminal in the MREC offices will enhance efficiency.

RECOMMENDATION F-2

The real estate commission and the Business Regulation Department should continue to review the processes where the commission can or already does make use of the Central Licensing Division, with an eye toward greater coordination and efficiency. Necessary legislation should be enacted to assist in achieving that aim; for example, the statutory requirement that the seal of the commission be affixed to each license should be repealed, since it unnecessarily impedes the central licensing process.

(c) Department; vouchers. The subcommittee learned that expenditures from the Real Estate Fund are currently made at least sometimes at the Department level without the consent of the director. For purposes of accountability and planning, this procedure seems inadvisable. Under 32 MRSA §4055, second sentence, expenditures from the Real Estate Fund are to be paid only "upon vouchers signed by the director and approved by the Commissioner of Business Regulation." The subcommittee heard no reason why this legislative mandate should be abandoned, and therefore it should be followed.

(d) Commission and director. In FY 1981, the cost of the commission itself amounted to \$11,287, or about 5.3% of the MREC budget. In addition, up to 50% of the director's time and a substantial amount of other staff resources may be dedicated to preparing for commission meetings. It is therefore important to minimize the instances of wasted commission time. The subcommittee believes that many of the recommendations made in the study bill work toward achieving that end by allocating tasks to the director which do not require the policy or adjudicatory capacities of the commission. The result, however, may not be reflected in direct reductions of expenditures, but in a fairer, more expeditious

tious system and an increase in productivity.

3. Staff levels. The actual employee count and assignments are determined by the director, pursuant to the Personnel Law (see 32 MRSA § 4053-A). Nonetheless, as part of its consideration of financing proposals, the subcommittee solicited information from the commission of possible staffing patterns. That information is contained in Appendix A.

The subcommittee concluded that, given the level of activity envisioned under the changes recommended in the study bill, the legislative aversion to additional financing, and current financial projections, the commission's "ideal" staff level of 9 is probably unrealistic. While the experience since the Spring of 1982 is evidence that a staff level of 3 is woefully inadequate, the subcommittee agreed that a staff of no more than 6 or 7, including the director, represents a fair compromise between the "ideal" and extreme fiscal austerity.

RECOMMENDATION F-3

The real estate commission should seek to provide an adequate level of services within the constraints of the Real Estate Fund. This will entail periodic evaluation of the commission's program and reassessment of financial projections. When it becomes evident that financial problems are soon to occur, the commission should act quickly to avoid abrupt curtailment of critical services. Legislative options may include reductions in programs administered by the commission, or possibly, broadening of revenue sources (see Recommendation F-1, supra).

C. Programs.

The study subcommittee reviewed current programs of the commission, as well as a number of suggested changes, deletions and new programs.

1. Licensing. The licensing function of the commission is widely considered one of its most important duties. On a scale of 1 to 5, 64.5% consumers answering the survey question rated this duty "1" (most important); 25.8% rated it "2"; only 9.6% rated it "3" (least important); and no one answered that it was something the commission should not do. In the general survey, answered almost exclusively by industry members, 90.6% rated it as "1", 9.4% as "2", and none in the other categories.

The current license law, contained in 32 MRSA chapter 59, subchapter III (§§ 4101 and following), has become disorganized over time. It may be unclear to anyone what are the requirements for different licenses, and what are the respective powers of the commission and its director to make decisions on issuances, refusals, renewals, and denials of renewals.

RECOMMENDATION P-1

The real estate license law should be reorganized into a logical format. The powers of the commission and the director to decide upon licenses and renewals should be clarified, and the commission itself should be granted the power to decide these issues, subject to appeal to the Administrative Court.

While a number of proposals were forwarded concerning inactive and part-time agents, the subcommittee makes no recommendations in this area.

2. Enforcement. Under current law, the commission's power to discipline licensees for violations is virtually absent. After a thorough investigation and despite an opportunity to be heard before the commission, the most severe penalty the commission itself can impose is a reprimand. Any fine, suspension or revocation must go to the Office of the Attorney General for prosecution in Administrative Court. Enforcement is therefore extremely time-consuming and consequently ineffective.

This was the single most often-encountered criticism of MREC by the complainants surveyed: that despite fair and proper actions by the the commission, its limited powers prevented or unconscionably delayed a just resolution.

In the surveys, of those answering the same questions in the complainants survey (CS) and general survey (GS), the percentage answers were as follows:

QUESTION: What do you think the duties of the Maine Real Estate Commission should be?

	<u>Most</u> <u>Imp't</u> (1)		(2)		<u>Least</u> <u>Imp't</u> (3)		<u>Shouldn't</u> <u>Do</u> (4)	
	<u>CS</u>	<u>GS</u>	<u>CS</u>	<u>GS</u>	<u>CS</u>	<u>GS</u>	<u>CS</u>	<u>GS</u>
h. Investigating complaints of misconduct by real estate agents	93.9%	75.7%	6.1%	9.1%	0%	9.1%	0%	6.1%
i. Disciplining real estate agents	81.2%	57.6%	12.5%	12.1%	0%	12.1%	6.2%	18.2%

Similarly, when asked whether, given its current powers, MREC was a helpful forum for resolving disputes, many survey respondents answered "no," or a grudging "yes," and argued for greater commission powers.

RECOMMENDATION P-2

The real estate commission should be given limited enforcement powers to issue fines up to \$500, or to suspend licenses for up to 60 days. Appeals on matters of law should go to the Administrative Court.

RECOMMENDATION P-3

Fines assessed by the courts should be increased. Such fines should also include the amount of compensation received in the subject transaction, in order to assure that the violator does not profit from the wrongdoing, even after the fine is taken into account.

RECOMMENDATION P-4

The director should be allowed to act as an advocate for any party in a dispute in order to assure the proper representation of the public interest and to encourage prompt and thorough resolutions. In addition, where the case lacks merit or where the parties can agree to a resolution, and where it is in the public interest, the director should be permitted to resolve cases without action by the full commission, but subject to review by the commission.

3. Continuing education. The subcommittee makes no recommendation on this controversial subject. The subcommittee received a great deal of comment on this topic from people aligned on both sides of the issue. A number of alternative suggestions were received, from abolition to enhancement of the program. The subcommittee working papers may serve as valuable input in evaluating future proposals.

4. Other MREC programs. The subcommittee received input on a number of other MREC programs, both past and present, about which no recommendations are being forwarded. Among these, it was noted that the trust account audit program (32 MRSA §4004-A) provides a good opportunity for contact between MREC and licensees; due to funding limitations, however, the program has received a low priority.

In another area, MREC formerly produced a pamphlet entitled, "Buyer, Seller, Broker: Real Estate Transaction Handbook" which served a valuable role in providing consumers with the information necessary to perform real estate sales or purchases and to deal with real estate agents. This program has been discontinued due to lack of funding, despite its popularity among both agents and the public.

The Home Service Contracts law (32 MRSA c. 59, sub-c. IV, §4120 et seq.), enacted by PL 1981, c. 75, has already had some successful results.

5. Proposed programs. A number of suggestions for additional programs were made to the subcommittee, but again are not made part of the recommendations. Among these are: licensing of "business brokers"; regulation of real estate franchises; and a "recovery fund" to reimburse victims of licensees' fraud. In addition, there was some support for the ideas of redefining the "designated broker" role, and the common-law relationships among agents, sellers and buyers.

APPENDIX A

At the request of the study subcommittee, the director of the Real Estate Commission prepared the following materials concerning present and projected workloads and finances at MREC. While the subcommittee does not concur with all parts of this assessment, it is enclosed with the study report for informational purposes.

MAINE REAL ESTATE COMMISSION

1982 thru 1984

Program and Staffing Information

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REAL ESTATE COMMISSION

1982-1983 Program

Absent conflicting recommendations from the Business Legislation Study Committee, and financial resources permitting, the Commission will begin rebuilding its staff in December of 1982. The staff will be increased from three to five in December and from five to six by July of 1983. Using a staff of six employees the Commission expects to provide a minimum level service in all required areas of responsibility.

I. 1983-1984 Program Without Legislative Changes

This years program will differ from the program of the past several years in that the routine auditing of brokerage offices will be eliminated; and the field investigator position will be sacrificed, in favor of a position to provide the Commission with staff support for license examination and educational activities. A summary of each activity area using six employees is as follows:

- A. *Real Estate Commission.* The Commission will hold 24 meetings including 18 hearings related to license applications or to hear appeals filed for reconsideration of complaint decisions. The Commission will address 85 complaints, and will review applications for schools and instructors to determine whether guidelines have been met. The Commission will also consider experience qualifications of certain broker license applicants. A new emphasis will be placed on the pre-licensure course curriculum and the license examination as a result of staff support in this area.
- B. *Director's Activities.* This activity area includes the Director's position and 45% of a Clerk Typist III's position. Activities will include supervision of all staff activities, preparing information for Commission meetings, meeting with the Commission to assist in the decision making, and implementation of decisions. The Director will prepare five consent agreements for resolution of complaints and prepare 20 complaint decisions subject to review and approval by the Commission. Responses to an estimated 15 appeals will also be prepared. Two home service company applications, 4 home service contracts will be reviewed, and 15 complaints will be investigated. A substantial amount of time will be devoted to establishing the program for creating and maintaining license examinations. Fifty-two weekly reports, an annual report and a financial work program will be prepared. Response to five hundred real estate transaction inquiries will be made.

- C. *Education and Examinations.* This activity area will utilize one Real Estate Examiner position, 20% of a Clerk Typist II's position and 10% of a Clerk Typist III's position after conversion of the license examination to the word processing system. A continuous review of industry practices, complaints and results, and court decisions will be conducted. The findings will be analyzed and the pre-licensure course curriculum will be modified to add emphasis to problem areas. Advice of curriculum changes will be conveyed to instructors and also reflected on the license examination. The examination will be continuously updated and refined based upon statistical analysis of test results. Four different license examination forms of similar difficulty will be generated each month.

This activity area will also include the creation of six clock hours of continuing education to be delivered in at least two rural areas of the State each year. Assistance in creation of continuing education programs will also be provided to groups of licensees who wish to sponsor their own courses. Two to four issues of a newsletter will be prepared each year. If time permits educational programs will be monitored and reports will be provided to the Commission or the Continuing Education Committee, as appropriate, for use in considering re-approval of programs.

- D. *Licensing and Examinations.* This activity area will utilize the license and examination supervisor and eighty percent of the time of a Clerk Typist II. A noteworthy change in this area will be that the Commission will have its own computer terminal providing direct data entry and verification, rather than the current system of preparing data entry forms and subsequent verification of data entry from computer printouts. The following is a representation of the expected workload:

Collection, depositing, recording revenue.	\$250,000
Response to inquiries (tel, letter, office visits) relating to licensing, examinations and education.	4-5,000
Processing renewal license applications.	3,250
Processing license changes.	1,450
Processing license examination applications.	800
Administer and score license examinations (45 sessions).	775
Original license application processing and issuing new licenses.	450
Processing application schools and instructors.	150
Processing home service contract sales agent applications.	60

Conducting examination reviews.	50
Preparing information and presenting information to the continuing education committee at meetings.	12
Issuing course approvals.	75

E. *Enforcement.* This activity area will employ a Real Estate Examiner II position and the services of 45% of a Clerk Typist III's time. Activities will include responding to 900 to 1,000 inquiries relating to license law applications in unusual situations, investigation of 85 complaints, preparing reports, writing sixty decisions, distributing hearing notices and decisions, maintaining related records, and assisting with the preparation of cases for disciplinary proceedings. Trust account audits will be conducted when necessary due to serious allegations relating to misuse of funds held in trust.

II. 1983-1984 Program With Proposed Legislative Changes

The changes currently under consideration by the Business Legislation Study Committee are expected to enhance the credibility of the regulatory process and to add a substantial incentive for earlier resolution of complaints. The fact that the Commission will have the authority to impose limited sanctions will serve as a more effective deterrent, where the current two year time lag is ineffective. The law changes together with additional staff will allow the Commission to make better use of the computer resources available. The Commission will be spending less time on routine issues and additional time on issues of more substantial impact. The emphasis will be on action to avoid problems, rather than reaction to problems which have occurred.

A summary of the impact of the changes on activity areas is as follows:

- A. *Real Estate Commission.* The Commission will be conducting adjudicatory hearings on 12 complaints and hearings to reconsider staff actions on another 12 issues. The remaining complaints and licensing issues will be disposed of by the staff with the Commission reviewing the results for purpose of planning and rulemaking. More time would be devoted to formal advisory rulings to address recurring questions and issues thereby permitting greater reliance on Commission responses.
- B. *Director's Activities.* More time would be provided to supervising staff activities and in resolution of complaints. Twelve cases will be presented to the Commission and the resulting decisions prepared and implemented. Additional emphasis would be applied to providing reports on staff activities and proposed program changes to achieve better

results, for consideration by the Commission. Additional time will be afforded toward maximizing the benefits of computer licensing and word processing.

C. *Education and Examinations.* This activity will benefit from additional sources of information i.e. field investigations and audits. The increased clerical support will also have impact upon the productivity of this activity area.

D. *License and Examinations.* This area will be assisted by the clerical backup during peak work periods, position vacancies, vacations or illness.

E. *Enforcement.* The activity area will include 15 investigations for the purpose of avoiding potential problems in addition to investigation of 85 complaints. Allegations of unlicensed practice will be pursued. The Examiner II will spend more time working with the results of investigations to dispose of complaints rather than conducting the initial investigations.

1. *Field Investigator.* The field investigator will conduct between 800 and 1,000 interviews adding substantially to the visibility of the Commission enforcement program. Most importantly it will provide more information to work with in resolving complaints, and collecting information essential to successful disciplinary proceedings. It is expected that an average of two months processing time will be eliminated from each complaint. The earlier attention will reduce the damages incurred by the complainant. This position also provides a backup in the event of a vacancy, illness, vacations or unusual workloads for the Examiner II position.

2. *Auditor.* The auditor position will conduct 350 to 400 brokerage office audits. In addition to detecting and correcting violations before complaints are filed, it serves as a communication link with the industry in less of an adversary relationship. It provides information to the Commission on new industry practices, frequently before problems arise. It also enhances awareness of licensing laws and therefore promoting compliance. This position also provides backup for the field investigator in the event of position vacancy, illness, vacations or unusual workloads.

3. *Clerk Typist I.* This position will be typing correspondence for both the field investigators and the auditor. Work assignments will also include typing 800 to 1,000 interview reports and 350 to 400 audit reports. Supporting information will also be prepared for audits consisting of previous violations and current licensing information. This position will also provide backup for the Clerk Typist III and II positions in the event of vacancies, illness, vacation and unusual workloads. This position will be most important to other activity areas each time substantial typing projects are required, such as hearing transcripts. With increased enforcement authority the likelihood that transcripts will be needed will also increase.

APPENDIX A

ACTIVITY COST BREAKDOWN

Expense	Commission 4 Members	General Admin. CT I	Director 45%- CT III	Education & Exam 20%-CT II 10%-CT III	License & Exam 80%- CT II	Enforcement Examiner II 45%-CT III	Field Invest. Examiner I 30%-CT I	Auditor Exam. I 40%- CT I	5th Commission Member	Totals
Adm. Services Central Lic.		8100			16200					8100 16200
Salaries	8000	3500	31500	18000	27500	23500				150000 8000
Blue Cross		300	1300	1150	1600	1250	17500	18500		23100 500
Retirement Group Life		600	5200	2900	4600	3900	2900	3000		9500 6500
Legal Serv. Travel		500	500	1000		9000 500	2800	1700		23100 500
Telephone Equip. Repair	500	1125 200	1125		1125	1125				5000 200
Insurance Meter Post.	800	100 1000	500	2000	2500	1000			200	100 8000
Intra Gov't Printing(State)		600 200			800					600 1000
Dept. LAW Printing		200		3000 7000	800					3000 8000
Ad Notices Comm. Travel	5000	600								600 6000
NAARELLC Gen. Oper.	100	500 300	100	100	300	100				500 1000
Office Equip Sta Cap	800	500 1000	2100	1800	2000	2100	1300	1300	200	500 12600
TOTAL	15,200	19,125	42,825	36,950	57,425	42,475	25,650	25,750	3,400	269,000

MAINE REAL ESTATE COMMISSION
Comparison of Financial Projections

Fiscal Year	CURRENT PLAN*		
	License Revenue (-2%)	Expenditures (+5%)	Balance
1982/83	250,000	160,900	133,200
1983/84	245,000	207,900	170,300
1984/85	240,000	218,300	192,000
1985/86	235,000	229,200	198,300
1986/87	230,500	240,700	188,100
1987/88	226,000	252,700	161,400
1988/89	221,500	265,300	117,600
1989/90	217,000	278,600	56,000

*These projections include adding two positions to the current staff in December of 1982 and a third position in July of 1983. Total (6) positions.

Fiscal Year	PROPOSED ALTERNATIVE*			
	Transfer Tax (+5%)	License Revenue (-2%)	Expenditures (+5%)	Balance
1982/83	-0-	250,000	160,900	133,200
1983/84	40,000	245,000	269,000	149,200
1984/85	42,000	240,000	282,500	148,700
1985/86	44,100	235,500	292,500	131,800
1986/87	46,300	230,500	311,500	97,100
1987/88	48,600	226,000	327,000	44,700
1988/89	51,000	221,500	343,500	-----
1989/90	53,500	217,000	360,600	-----

*These projections anticipate enactment of the proposals under consideration by the Committee and to include a staffing level of nine. As a baseline these projections anticipate five employees from December "82" thru June "83" and then starting the fiscal year 1984 with nine employees.

REAL ESTATE COMMISSION
Position Description

DIRECTOR

Purpose

The primary purpose of this position is to supervise the implementation and enforcement of the real estate brokerage licensing laws within the guidelines established by the Commission and to assist the Commission in establishing standards of practice and program policies. This position reports to the Commissioner of the Department of Business Regulation with respect to overall operations and administrative matters. This position reports to the Real Estate Commission with regard to licensing and regulatory matters.

Primary Tasks

- 20% (1) Direct the implementation and enforcement of laws.
- 5% (2) Identify issues to be addressed by policy or rulemaking and assist the Commission in making changes.
- 5% (3) Participate as a member of the Commission establishing policy, rules, educational curriculum, scope and content of license exams, budgets, advisory rulings and regulatory decisions.
- 5% (4) Act as a liason between the Commission and the Department, the industry, the public and other government agencies.
- 10% (5) Negotiate resolution of complaints.
- 20% (6) Determine which cases are appropriate for hearing, prepare allegations and notices, present evidence at hearings.
- 30% (7) Analyze evidence and prepare or supervise preparation of findings of fact, conclusions, and disposition following investigation, hearing or appeals.
- 5% (8) Review home service company license applications, financial statements and contracts for licensing and approval.

Salary Range 29 - \$20,841.60 - \$27,726.40

REAL ESTATE COMMISSION
Position Description

REAL ESTATE EXAMINER
(Education and Examinations)

Purpose

The primary purpose of this position is to prepare and update license examinations and pre-licensure course curriculum, monitor school performance, assist in preparation and delivery of educational programs and to prepare educational information for dissemination. This position reports to the Director.

Primary Tasks

- 20% (1) Determine the knowledge and skills necessary for competent performance as a real estate broker and a real estate salesman.
- 15% (2) Prepare and update a detailed course outline for use by pre-licensure course instructors.
- 15% (3) Write or collect test items based upon the subject matter covered in pre-licensure courses.
- 10% (4) Organize test items into various exam forms of approximately equal difficulty.
- 10% (5) Inform and work with approved instructors with regard to changes in the license examination.
- 5% (6) Conduct reviews for failing applicants.
- 5% (7) Audit pre-licensure and continuing education programs and provide related written performance reports for the Commission or Continuing Education Committee.
- 10% (8) Assist interested persons or groups in preparation and delivery of special need courses, especially in rural non-profit areas of the state.
- 10% (9) Prepare educational information such as a newsletter or consumer information pamphlets or booklets.

Salary Range 17 - \$13,145.60 - \$17,513.60

REAL ESTATE COMMISSION
Position Description

REAL ESTATE EXAMINER II
(Investigations)

REAL ESTATE COMMISSION
Position Description

SUPERVISOR OF LICENSING AND EXAMINATIONS

Purpose

The primary purpose of this position is to supervise the testing of license applicants, the licensing process and also serves as the executive secretary for the Continuing Education Committee. This position reports to the Director.

Primary Tasks

- 20% (1) Review license and examination applications to verify qualifications or to identify applicants for which Commission consideration is required.
- 20% (2) Advise the public and licensees with regard to education, licensing and examination qualifications and procedures.
- 20% (3) Schedule, administer, score and report the results of license examinations.
- 5% (4) Supervise the preparation of licenses and maintenance of licensing records.
- 5% (5) Supervise revenue collection, depositing and maintenance of records.
- 10% (6) Process applications and maintain records for certification of pre and post licensing educational programs and instructors and maintain records of student performance.
- 20% (7) Prepare information, applications, and meet with the Continuing Education Committee record their actions and implementing decisions.

Salary Range 18 - \$13,644.80 - \$18,241.60

Purpose

The primary purpose of this position is to supervise the investigation of complaints, conduct special assignment investigations, and assist the Director in preparation and implementation of decisions. This position reports to the Director.

Primary Tasks

- 20% (1) Counsel both the industry and the public with regard to problem real estate transactions.
- 10% (2) Receive and assist in the preparation of complaints with regard to general industry practices and problem real estate transactions identifying areas of alleged violations.
- 15% (3) Investigate or supervise the collection of information and evidence.
- 20% (4) Organize evidence and information and prepare a case summary for review by the Director.
- 20% (5) Assist the Director in preparation of findings of fact, conclusions, and disposition of cases following investigation or hearings.
- 10% (6) Distribute Commission decisions to parties and interested persons and conduct a follow up investigation to verify compliance.
- 5% (7) Maintain records relating to complaints, investigations, decisions and court actions. Prepare reports concerning investigation results.

Salary Range 22 - \$16,057.60 - \$21,902.40

CLERK TYPIST III

Purpose

The primary purpose of this position is to provide clerical support services for the Director and the Examiner II. This position reports to the Director.

Primary Tasks

- 50% (1) Typing of correspondence, reports, and case decisions.
- 20% (2) Operate word processing equipment to maintain records and generate license examinations, special mailing lists, investigation case information, license law and rules and other major typing projects.
- 10% (3) Prepare hearing transcripts from mechanical tape recordings.
- 5% (4) Maintain a filing system for all records, except licensing.
- 5% (5) Compose and type correspondence in response to minor routine inquiries.
- 5% (6) Organize and mail information to Commission members for meetings or hearing preparation.
- 5% (7) Maintain necessary office supplies.
- 5% (8) Open and distribute mail.

Salary Range 12 - \$11,232.00 - \$14,664.00

REAL ESTATE COMMISSION
Position Description

CLERK TYPIST II

Purpose

The primary purpose of this position is to provide clerical support services for licensing, examination, and educational program activities and to serve as the primary agency receptionist. This position reports to the Supervisor of Licensing and Examinations and the Examiner working with Education and Examinations.

Primary Tasks

- 30% (1) Typing correspondence and reports relating to licensing, education and examinations.
- 20% (2) Data entry for original licensing, changes and license renewals.
- 5% (3) Maintenance of license files.
- 20% (4) Typing of licenses and cards for license changes during the year and ordering computer preparation of licenses and cards following license examinations and renewals.
- 5% (5) Responds to requests for application materials and requests for information on available educational programs.
- 10% (6) Primary receptionist for the agency.
- 10% (7) Maintains license register.

Salary Range 8 - \$10,192.00 - \$13,187.20

REAL ESTATE EXAMINER
(Field Investigator)

Purpose

The primary purpose of this position is to conduct investigations in the field interviewing parties and witnesses and collecting documentation to be used in disciplinary proceedings or license application hearings. This position reports to the Examiner II.

Primary Tasks

- 65% (1) Conduct field interviews with parties and witnesses and cross checking testimony.
- 10% (2) Collect documentation related to alleged violations and testimony obtained. Inspect real estate when appropriate.
- 20% (3) Prepare detailed reports of interviews, appraisal of witnesses and observations regarding the subject property.
- 5% (4) Testify at hearings and trials.
- (5) Audit real estate brokerage offices and records.

Salary Range.17 - \$13,145.60 - \$17,513.60

REAL ESTATE COMMISSION
Position Description

REAL ESTATE EXAMINER
(Auditor)

Purpose

The primary purpose of this position is to audit real estate brokerage transaction records to verify compliance with laws and detect practices having a potential of significant harm to the public. This position reports to the Examiner II.

Primary Tasks

- 10% (1) Examine real estate listing agreements, sales contracts and related documents.
- 45% (2) Audit real estate trust accounts and supporting records.
- 25% (3) Prepare summarized reports for future reference or detailed reports for use in conjunction with investigations.
- 10% (4) Explain laws and rules in order to encourage compliance and serve as a liason between the Commission and licensees.
- 10% (5) Auditing of educational programs.

Salary Range 17 - \$13,145.60 - \$17,513.60

CLERK TYPIST I

Purpose

The primary purpose of this position is to provide clerical support services for the field investigator and the auditor and to serve as alternate receptionist. This position reports to the Clerk Typist III.

Primary Tasks

- 55% (1) Types interview and audit reports and correspondence relating to both areas.
- 10% (2) Prepare current licensing information and review past audit reports for use by the auditor.
- 5% (3) Maintain filing system for audit reports and related correspondence.
- 8% (4) Serves as alternate receptionist.
- 2% (5) Record daily cash.
- 20% (6) Assist other clerk typists accomplishing their tasks.

Salary Range 5 - \$9,568.00 - \$12,313.60

RECOMMENDED LEGISLATION

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No.

S.P. In Senate,

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT to Improve the Operation of the
Maine Real Estate Commission.

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

Sec. 1. 4 MRSA §1151, sub-§2, as amended by PL 1981, c. 698, §5, is further amended to read:

2. Licensing jurisdiction. Except as provided in Title 5, section 10004⁷; Title 29, chapter 17; Title 32, chapter 59; and Title 35, section 13-A, the Administrative Court shall have exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General, to revoke or suspend licenses issued by the agency, and shall have original jurisdiction upon complaint of a licensing agency to determine whether renewal or

reissuance of a license of that agency may be refused.

Notwithstanding any other provisions of law, no licensing agency shall have the authority to reinstate or otherwise affect a license suspended, revoked or modified by the Administrative Court pursuant to a complaint filed by the Attorney General, without the approval of the Attorney General.

Sec. 2. 4 MRSA §1151, sub-§2-A, is enacted to read:

2-A. Appellate jurisdiction. Pursuant to Title 32, section 4056, subsection 2, the Administrative Court shall have exclusive jurisdiction to hear appeals from disciplinary decisions of the Real Estate Commission. The Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII, shall govern this procedure as far as applicable, substituting "Administrative Court" for "Superior Court."

Sec. 3. 5 MRSA §10051, sub-§1, as amended by PL 1981, c. 698, §13, is further amended to read:

1. Jurisdiction. Except as provided in section 10004, Title 29, chapter 17; Title 32, chapter 59; and Title 35, section 13-A, the Administrative Court shall have exclusive jurisdiction upon complaint of any agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by such the agency and shall have original jurisdiction upon complaint of an agency to determine whether renewal or reissuance of a license of that agency may be refused.

Sec. 4. 5 MRSA §10051, sub-§3 is enacted to read:

3. Appellate jurisdiction. Pursuant to Title 32, section 4056, subsection 2, the Administrative Court shall have exclusive jurisdiction to hear appeals from disciplinary decisions of the Real Estate Commission. The Maine Administrative Procedure Act, chapter 375, subchapter VII, shall govern this procedure as far as applicable, substituting "Administrative Court" for "Superior Court."

Sec. 5. 32 MRSA §4005, as amended by PL 1975, c. 767, §49, is further amended to read:

§4005. Penalties

Any real estate broker or real estate salesman licensed as such real estate broker or real estate salesman in accordance with this chapter, who fails to renew his, her or its license biennially and continues to act as a real estate broker or real estate salesman, shall be punished by a fine of not less than \$25 \$100 nor more than \$100 \$400. Any person or corporation violating any other provision of this chapter shall upon conviction thereof, if a natural person, be punished by a fine of not more than \$500 \$1,000, plus the amount of compensation received in the subject transaction, or by imprisonment for not more than 6 months, or by both; and, if a corporation, be punished by a fine of not more than \$1,000 \$2,000, plus the amount of compensation received in the subject transaction. Any officer or agent of a corporation, or member or agent of a partnership or association, who shall personally participate in or be accessory to any violation of this chapter by such partnership, association or corporation, shall be subject to the penalties prescribed for individuals. Any court of competent jurisdiction shall have full power to try any violation of this chapter, and upon conviction, the court may at its discretion revoke, or suspend, the license of the person, partnership, association or corporation so convicted. All fines and penalties over and above the cost of court proceedings shall inure to the commission. A violation of this chapter shall include performing or attempting to perform those acts which constitute prohibited practices under section 4056.

Sec. 6. 32 MRSA §4051-A, as amended by PL 1981, c. 359, §8, is repealed and the following enacted in its place:

§4051-A. Real Estate Commission; organization

1. Real Estate Commission created. There is created the Real Estate Commission, hereinafter referred to as the "commission." The commission

1 shall consist of 4 industry members and one public
2 member, as provided in this section.

3 2. Qualifications. Each industry member of the
4 commission shall have been a real estate broker or
5 salesman by vocation in this State for at least 5
6 years prior to appointment. The public member shall
7 have had no professional or financial connection with
8 the real estate business.

9 3. Geographic distribution. There shall at no
10 time be more than one member of the commission from
11 any one county.

12 4. Term; removal. Terms of the members of the
13 commission shall be for 3 years. No person may be
14 appointed for more than 2 consecutive 3-year terms.
15 A vacancy occurring prior to the expiration of a term
16 shall be filled by an appointment for the unexpired
17 term. Members may be removed by the Governor for
18 cause.

19 5. Quorum; procedure. A majority of the members
20 of the commission constitutes a quorum for the trans-
21 action of business under this chapter. The commis-
22 sion shall establish guidelines, policies and rules
23 by which it shall carry out the duties prescribed by
24 this chapter.

25 6. Appointments. The members of the commission
26 shall be appointed by the Governor, subject to review
27 by the joint standing committee of the Legislature
28 having jurisdiction over business legislation and to
29 confirmation by the Senate. As a part of the
30 appointment, the Governor shall specify whether the
31 appointment is for a vacancy occurring prior to the
32 expiration of a term, in which case the appointment
33 shall be only for the remainder of the unexpired
34 term.

35 7. Chairman. The commission shall annually
36 elect a chairman from its members.

37 Sec. 7. 32 MRS §4051-C is enacted to read:
38 §4051-C. Director

1 1. Appointment. The Commissioner of Business
2 Regulation, with the advice of the Real Estate Com-
3 mission and subject to the Personnel Law, shall
4 appoint a director of the commission.

5 2. Duties. The director is responsible for man-
6 agement of the commission's affairs, within the
7 guidelines, policies and rules established by the
8 commission, and for carrying out any duties allocated
9 to the director under this chapter. Except as other-
10 wise provided, duties of the director may be per-
11 formed by the director's designee, other than a
12 member of the commission.

13 Sec. 8. 32 MRS §4056, sub-§1, as amended by PL
14 1981, c. 359, §10, is repealed and the following
15 enacted in its place:

16 1. Investigations. The director, upon receipt
17 of a verified written complaint or in accordance with
18 guidelines and policies prescribed by the commission,
19 shall investigate the actions of any real estate
20 licensee or any person who assumes to act in the
21 capacity of a licensee. Upon completion of the
22 investigation, the director shall take one of the
23 following actions, and give notice to all interested
24 parties of the action and of their rights to further
25 pursue the matter:

26 A. Dismiss the complaint;

27 B. In the case of an investigation without a
28 complaint, elect not to pursue the matter;

29 C. File the complaint or charge, subject to fur-
30 ther action at a later time if required in the
31 public interest;

32 D. With the consent of the parties and subject
33 to approval of the commission and commission
34 counsel, execute a consent agreement providing
35 for resolution of the basis of the dispute; or

36 E. Issue a staff complaint for a hearing before
37 the commission, setting forth the basis for the
38 complaint and, in the director's discretion, any
39 recommended disposition.

1 Sec. 9. 32 MRSA §4056, sub-§2, as repealed and
2 replaced by PL 1977, c. 365, is repealed and the fol-
3 lowing enacted in its place:

4 2. Commission action. In the case of an alleged
5 violation of this chapter, the commission shall hold
6 a hearing as follows.

7 A. The commission shall hold a hearing on a
8 staff complaint, or if the director has elected
9 to dismiss, file or not pursue a matter, on peti-
10 tion of a party aggrieved by the director's deci-
11 sion. An aggrieved party shall have 10 days from
12 receipt of notice of the director's decision in
13 which to file the petition with the commission.

14 B. The director may act as an advocate at a
15 hearing, presenting evidence and argument in sup-
16 port of a staff complaint or other staff deci-
17 sion.

18 C. Notice of a hearing shall be given to all
19 interested parties at least 10 days prior to the
20 date on which the hearing is set.

21 D. The commission shall adopt rules governing
22 the conduct of hearings. The rules shall include
23 provisions governing communications between the
24 members of the commission and the director and
25 staff, in order to assure that members are not
26 prejudiced in a case through ex parte communica-
27 tions with the director and staff. These rules
28 shall not be construed to prohibit communications
29 between members of the commission and the direc-
30 tor and staff with regard to matters other than
31 the merits of a case pending hearing before the
32 commission.

33 E. In the discharge of the duties imposed by
34 this chapter, the commission may administer oaths
35 and affirmations, certify to official acts and
36 issue subpoenas to compel the attendance of wit-
37 nesses and the production of books, papers, cor-
38 respondence, memoranda and other records deemed
39 necessary as evidence in connection with the
40 administration of this chapter. Whenever a
41 person refuses to obey a subpoena duly issued by

1 the commission, the Superior Court for Kennebec
2 County or any court of this State within the
3 jurisdiction of which the person resides or
4 transacts business shall have jurisdiction to
5 issue to that person an order requiring him to
6 comply with the subpoena, and any failure to obey
7 that order may be punished by the court as con-
8 tempt. Refusal to obey a commission subpoena
9 constitutes a violation of this chapter.

10 F. If the commission, after a hearing, finds
11 that a violation of this chapter has occurred, it
12 shall:

13 (1) Report its findings and recommendations
14 to the Attorney General or district attorney
15 for prosecution;

16 (2) If it finds that there are mitigating
17 circumstances, reprimand the person;

18 (3) Assess the violator a fine of no more
19 than \$500 for each violation;

20 (4) Except for violations under subsection
21 5, suspend the violator's license for up to
22 60 days; or

23 (5) Require the person to comply with such
24 terms and conditions as it determines are
25 necessary to correct or prevent the basis of
26 the violation.

27 G. Appeals from decisions of the commission
28 shall be to the Administrative Court. Appeals
29 shall be based on questions of law. The proce-
30 dure for appeals under this section shall be as
31 provided in the Maine Administrative Procedure
32 Act, Title 5, chapter 375, subchapter VII, except
33 that, for purposes of this section, all refer-
34 ences to the Superior Court shall be construed as
35 references to the Administrative Court. Further
36 appeal shall be directly to the Law Court.

37 Sec. 10. 32 MRSA §4058, as amended by PL 1975,
38 c. 767, §60, is repealed.

1 Sec. 11. 32 MRSA §4103, as amended by PL 1981,
2 c. 76, §2, is repealed and the following enacted in
3 its place:

4 §4103. Application for real estate broker's license
5 or salesman's license

6 An applicant for a real estate broker's license
7 or salesman's license shall submit to the commission
8 the following:

9 1. Application. A properly completed applica-
10 tion in writing upon blanks prepared or furnished by
11 the commission;

12 2. Evidence of qualifications. Written evi-
13 dence, verified by oath, that the applicant:

14 A. Is 18 years of age or older;

15 B. Is a resident of this State, qualified to
16 vote in municipal and state elections prior to
17 his application, except this paragraph shall not
18 apply when the applicant is a nonresident of this
19 State qualifying under section 4002;

20 C. Has not had an application rejected in this
21 State or any other state within 6 months prior to
22 the date of the application;

23 D. Has not had a real estate license revoked in
24 this State or any other state within 2 years
25 prior to the date of the application; and

26 E. Except in the case of a person who has held
27 any license from the commission prior to December
28 31, 1963, has a high school education or its
29 equivalent approved by the commission;

30 3. Sworn statement. A sworn statement setting
31 forth:

32 A. The applicant's present address of his busi-
33 ness and residence, and a complete list of all
34 former places where the applicant may have
35 resided and been engaged in business for a period
36 of 60 days or more during the last 2 years.

1 together with the name and address of one real
2 estate owner in each of those places; and

3 B. A statement of whether the applicant has been
4 convicted of a criminal offense, other than a
5 violation of the fish and wildlife laws, motor
6 vehicle traffic laws or municipal ordinances
7 where the fine imposed does not exceed \$50, and,
8 if so, what offense;

9 4. Recommendations. The recommendation of at
10 least 3 citizens, not related to the applicant, who
11 have owned real estate for a period of no less than
12 one year in the county in which the applicant resides
13 or has a place of business, and who acknowledge
14 before a notary public that:

15 A. They have known the applicant for a period of
16 at least the 6 months immediately prior to the
17 date of the application;

18 B. The applicant bears a good reputation of hon-
19 esty, trustfulness, fair dealing and competency;
20 and

21 C. They recommend that a license be granted to
22 the applicant;

23 5. Other information. Such other information as
24 is required by this chapter or which the commission,
25 with due regard to the paramount interests of the
26 public, deems desirable to prove the honesty,
27 truthfulness, integrity, reputation and competency of
28 the applicant; and

29 6. Fee. Payment for the fee prescribed by
30 section 4107.

31 Sec. 12. 32 MRSA §4104, as amended by PL 1975,
32 c. 767, §70, is repealed and the following enacted in
33 its place:

34 §4104. Additional application requirements for bro-
35 ker's license

36 In addition to the application materials required
37 by section 4103, an applicant for a real estate bro-

1 ker's license shall submit to the commission the fol-
2 lowing:

3 1. Associates. The name of the person, firm,
4 partnership, association or corporation with which
5 the applicant will be associated in the business of
6 real estate;

7 2. Location. The location of the place or
8 places for which the license is desired;

9 3. Experience. The period of time, if any,
10 during which the applicant has been engaged in the
11 real estate business; and

12 4. Education. Except in the case of a person
13 who has held any license from the commission prior to
14 December 31, 1963, and except as provided in section
15 4002, evidence that the applicant has satisfactorily
16 completed an educational course in the field of real
17 estate approved by the commission or has been
18 employed as a licensed salesman full time for at
19 least a year.

20 Sec. 13. 32 MRSA §4105, as amended by PL 1967,
21 c. 359, §§3 and 4, is repealed and the following
22 enacted in its place:

23 §4105. Additional application requirements for
24 salesman's license

25 In addition to the application materials required
26 by section 4103, an applicant for a real estate
27 salesman license shall submit to the commission the
28 following:

29 1. Associates. The name and address of the
30 applicant's last employer and the name and place of
31 business of the person, firm, partnership, associa-
32 tion or corporation then employing the applicant or
33 into whose service the applicant is about to enter;

34 2. Experience. The period of time, if any,
35 during which the applicant has been engaged in the
36 real estate business; and

1 3. Broker's recommendation. A written statement
2 by the broker, into whose service the applicant is
3 about to enter, stating that, in the broker's opin-
4 ion, the applicant is honest, truthful and of good
5 reputation and recommending that the license be
6 granted to the applicant.

7 Sec. 14. 32 MRSA §4106, as amended by PL 1975,
8 c. 767, §71, is repealed and the following enacted in
9 its place:

10 §4106. Additional application requirements for asso-
11 ciations, partnerships and corporations

12 In addition to the application materials required
13 elsewhere in this chapter, an association, partner-
14 ship or corporation applying for a license to conduct
15 the business of a real estate broker shall submit to
16 the commission the following:

17 1. Associations and partnerships. Where the
18 applicant is an association or partnership, a sworn
19 statement containing:

20 A. The name and address of each member thereof;
21 and

22 B. A statement whether any member thereof has
23 been convicted of a crime specified in section
24 4103, subsection 3, paragraph B, and, if so, the
25 member's name and the offense;

26 2. Corporations. Where the applicant is a cor-
27 poration, a sworn statement containing:

28 A. The name and address of each officer and
29 director thereof; and

30 B. A statement whether any officer or director
31 has been convicted of a crime specified in
32 section 4103, subsection 3, paragraph B, and, if
33 so, the person's name and the offense; and

34 3. Designated broker. Where the applicant is an
35 association, partnership or corporation, a designa-
36 tion of one of its officers, who is licensed by the
37 commission as a real estate broker, as its designated
38 broker.

1 Sec. 15. 32 MRSA §4107, sub-§3 is enacted to
2 read:

3 3. Conversion. A real estate salesman who
4 applies and qualifies for a real estate broker li-
5 cense shall receive a real estate broker license for
6 any unexpired period remaining on the salesman's li-
7 cense without charge.

8 Sec. 16. 32 MRSA 4107-A, as repealed and
9 replaced by PL 1979, c. 693, §3, is repealed.

10 Sec. 17. 32 MRSA §4108 is repealed and the fol-
11 lowing enacted in its place

12 §4108. Denial of license or renewal

13 1. Grounds for denial. An application for a
14 real estate broker's license or salesman's license or
15 renewal may be denied for any of the following
16 reasons:

17 A. The applicant fails to submit to the commis-
18 sion any materials, statements or fees required
19 by this chapter, including the requirements of
20 section 4115-C;

21 B. The applicant fails to submit satisfactory
22 proof to the commission that he is trustworthy
23 and competent to transact the business of real
24 estate broker or salesman in such manner as to
25 safeguard the interests of the public;

26 C. The applicant makes a material misrepresenta-
27 tion in applications or related materials to the
28 commission;

29 D. Subject to Title 5, chapter 341, the commis-
30 sion determines that the applicant's conviction
31 of a crime disqualifies him for the license; or

32 E. If the applicant is required under section
33 4110 to submit to a written examination, and he
34 fails to achieve a passing score on the examina-
35 tion.

1 2. Additional grounds for denial; association,
2 partnership or corporation. In addition to the
3 grounds specified in subsection 1, a license or
4 renewal may be denied to an association, partnership
5 or corporation for any of the following reasons:

6 A. None of the principal officers holds a cur-
7 rent real estate broker license; or

8 B. Any employee, member or officer of the asso-
9 ciation, partnership or corporation, who acts as
10 a real estate broker or salesman, is not licensed
11 by the commission as a real estate broker or
12 salesman.

13 3. Powers and duties of the director. If it
14 appears to the director that grounds for the denial
15 of a license or renewal exist under this section, the
16 director shall promptly notify the applicant and:

17 A. If the basis for denial is that the applica-
18 tion materials are incomplete, as described in
19 subsection 1, paragraph A, notify the applicant:

20 (1) Of the materials needed to complete the
21 application;

22 (2) That the application will be held for
23 30 days pending completion by the applicant;

24 (3) That if the materials are not received
25 at the commission by the end of this period,
26 the license or renewal may be denied by the
27 director; and

28 (4) Of the applicant's right to a hearing
29 before the commission pursuant to section
30 4109, if requested within the 30-day period;

31 B. If the basis for the denial is that the
32 applicant is an association, partnership or cor-
33 poration failing to meet the requirements of sub-
34 section 2, notify the applicant:

35 (1) That the license or renewal is being
36 denied, together with the reason for the
37 denial; and

(2) Of the applicant's right to a hearing before the commission pursuant to section 4109, if requested within 30 days of the notice; or

C. If it appears to the director that some other basis for denial of the license or renewal exists, notify the applicant:

(1) Of the possible basis for denial; and

(2) That a hearing before the commission pursuant to section 4109 will be held to determine what action will be taken.

Sec. 18. 32 MRSa §4109 is repealed and the following enacted in its place:

§4109. Hearing on denial of license or renewal

1. Application. A hearing shall be held pursuant to this section if:

A. Pursuant to section 4108, subsection 3, paragraph A or B, the applicant requests a hearing; or

B. Pursuant to section 4108, subsection 3, paragraph C, such a hearing is required.

2. Director. The director shall seek to protect the interests of the public and the industry in assuring the trustworthiness, competence and qualifications of applicants for licenses and renewals. In this capacity, the director may serve as an advocate in hearings under this section, presenting evidence and argument in support of a recommended disposition.

3. Notice. Notice of a hearing shall be given to the applicant at least 10 days prior to the date on which the hearing is set.

4. Procedure; rules, subpoenas. The provisions of section 4056, subsection 2, paragraphs D and E, and rules promulgated in accordance therewith, shall apply equally to hearings held under this section.

5. Disposition. After hearing, the commission may:

A. Affirm, modify or reverse a decision of the director to deny a license or renewal;

B. Deny or refuse to issue a license or renewal; or

C. In the case of an application for renewal, in its discretion, file a complaint in the Administrative Court, pursuant to Title 4, chapter 25, and Title 5, section 10051, to determine whether renewal of the license may be denied.

Sec. 19. 32 MRSa §4110, last ¶, as repealed and replaced by PL 1979, c. 693, §4, is repealed.

Sec. 20. 32 MRSa §4111, as amended by PL 1975, c. 767, §73, is repealed.

Sec. 21. 32 MRSa §4112, as amended by PL 1975, c. 767, §74, is further amended to read:

§4112. Contents; display

The commission director shall issue to each licensee a license in such the form and size as shall be prescribed by the commission. Each license shall have imprinted thereon the seal of the commission and in addition shall contain such matter as shall be prescribed by the commission. The license of each real estate salesman shall be delivered or mailed to the real estate broker by whom such real estate salesman is employed and shall be kept in the custody and control of such broker. It shall be the duty of each real estate broker to display conspicuously his license and the licenses of all his salesmen in his place of business.

Sec. 22. 32 MRSa §4113, as repealed and replaced by PL 1977, c. 682, §10, is amended to read:

§4113. Pocket cards

The commission director may prepare and deliver to each licensee a pocket card, which among other

1 things shall certify that the person whose name
2 appears thereon is a licensed real estate broker or
3 real estate salesman, as the case may be; and if it
4 is a real estate salesman's card, it shall contain
5 the name of the real estate broker by whom he is
6 employed.

7 Sec. 23. 32 MRSA §4115-B, 4th ¶, as amended by
8 PL 1981, c. 707, §3, is further amended to read:

9 The commission director shall collect the pre-
10 scribed application fee. The commission may promul-
11 gate rules necessary for implementation and enforce-
12 ment of this section and shall maintain a current
13 list of programs receiving approval under this
14 section.

15 Sec. 24. Transition clause. All appointments
16 heretofore made by the persons referred to in this
17 Act shall continue in force and effect on the effec-
18 tive date of this Act. The provisions of section 6
19 regarding qualifications, term and appointments of
20 commissioners shall apply to all appointments and
21 réappointments made after the effective date of this
22 Act.

23 STATEMENT OF FACT

24 This bill contains the recommended legislation
25 from the Joint Standing Committee on Business
26 Legislation's study of the Maine Real Estate Commis-
27 sion, conducted during the 1982 interim. The thrust
28 of these proposals is to clarify the lines of author-
29 ity at the commission, to streamline parts of the
30 licensing and enforcement processes, and to clarify
31 provisions of the statute which over time have become
32 unduly confusing. In this latter regard, a number of
33 sections of the bill, particularly those revising the
34 license law, sections 10 through 23, effect no sub-
35 stantive change; rather, they reallocate portions of
36 present law in order to make the statute progress in
37 a more logical manner.

38 This bill makes changes in the composition and
39 method of appointment of members of the Maine Real
40 Estate Commission, and reforms the process of inves-

1 tigation and discipline of real estate licensees.
2 This proposal also reorganizes the current real
3 estate license law and clarifies the powers and
4 duties of the Maine Real Estate Commission and its
5 director.

6 Sections 1 through 4 amend the Maine Administra-
7 tive Procedure Act to allow for the limited enforce-
8 ment powers granted to the commission elsewhere in
9 the proposal, and to provide for appeals to the
10 Administrative Court on questions of law.

11 Section 5 provides for increased penalties for
12 violators, including provisions for forfeiture of
13 any gain realized on account of the violation.

14 Section 6 changes the composition of the Maine
15 Real Estate Commission by removing the director as a
16 member, replacing the director with an additional
17 industry member, changing the commissioners' terms
18 from 4 years to 3 years and requiring Senate confir-
19 mation of appointments after review by the Joint
20 Standing Committee on Business Legislation.

21 Section 7 clarifies the position of the director
22 as an administrator.

23 Section 8 assigns the primary enforcement duties
24 to the director, including the power to dismiss or
25 file a case where no further action is merited.
26 Present practice results in unnecessary costs and
27 delays, where the full commission must review each
28 case, regardless of merit. At the same time, the
29 proposal allows recourse to the commission from the
30 director's decision, to guard against the abuse of
31 his discretion.

32 Section 9 sets out the powers and duties of the
33 commission with regard to enforcement matters. Proce-
34 dures are designed to prevent prejudgment of a case
35 by the commissioners, a hazard of the present prac-
36 tices. The commission is given subpoena power to
37 assure access to information, the limited enforcement
38 powers to issue fines or suspensions, subject to
39 appeal to the Administrative Court. Present law
40 limits the commission to reprimands, consent orders
41 or to the referral of cases for prosecution to the
42 Attorney General.

1 Section 9 also provides that the director may act
2 as an advocate in order to assure that the public's
3 interests are protected. Presently, there sometimes
4 may be no incentive to a complainant to pursue a
5 case, where the ultimate resolution may be, e.g., a
6 license suspension rather than a monetary settlement.

7 Section 10 repeals a provision replaced in
8 section 17.

9 Section 11 combines the basic license require-
10 ments which all applicants must fulfill. These
11 provisions are contained in the present law, but are
12 scattered throughout the subchapter.

13 Sections 12 through 14 set out the additional re-
14 quirements for 3 types of licenses: Broker, salesman
15 and firm. Again these are not substantive changes,
16 but a reallocation to a more logical progression of
17 provisions.

18 Sections 15 and 19 reallocate a provision on con-
19 version of licenses.

20 Section 16 repeals a provision replaced in
21 section 17.

22 Section 17 represents the first set of substan-
23 tive changes in the license law portions of the bill.
24 It lays out the grounds and procedures for denial of
25 a license or renewal. In those cases involving ques-
26 tions of evidence or policy, a hearing before the
27 commission is provided. In cases where the determi-
28 nation of ineligibility is a more strictly ministe-
29 rial act, the director would be allowed to deny the
30 license or renewal, subject to the opportunity for a
31 hearing before the commission on request.

32 Section 18 sets out the powers and duties of the
33 commission with regard to denials of licenses and
34 renewals. The reference in proposed section 4109,
35 subsection 4, to section 4056, subsection 2, para-
36 graphs D and E, is to the latter section as proposed
37 in section 9 of the bill.

38 Section 20 repeals a provision replaced in
39 section 17.

1 Sections 21 through 23 simply clarify certain
2 purely administrative duties as belonging to the
3 director, not the commission. In addition, section
4 21 repeals the requirement for the commission's seal
5 to be imprinted on each license. This step unneces-
6 sarily complicates the issuance of licenses through
7 the Central Licensing Division of the Department of
8 Business Regulation. Licenses would continue to bear
9 the seal of the State of Maine.

10 Section 24 provides for the transition between
11 the present commission and future appointments.

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