

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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

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

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

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

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

PART A

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

TITLE 12-A

AGRICULTURE, CONSERVATION AND FORESTRY

SUBTITLE 1

DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

CHAPTER 1

DEPARTMENTAL ORGANIZATION AND OPERATION

SUBCHAPTER 1

GENERAL PROVISIONS

§ 101. Definitions

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

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

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

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

SUBCHAPTER 2

ORGANIZATION

§ 201. Department

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

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

§ 202. Mission; guiding principles

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

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

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

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

§ 203. Commissioner

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

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

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

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

- A. A vacancy in the commissioner's position must be filled in accordance with Title 5, section 1.
- B. The commissioner shall appoint one of the department's deputy commissioners to perform the duties of the commissioner, in addition to the duties of that deputy commissioner, during the commissioner's temporary absence or disability.

§ 204. Powers and duties of commissioner

The commissioner has all of the powers and duties necessary to carry out the mission and responsibilities of the department. The commissioner has the power to distribute the functions and duties given to the commissioner under this Title, Title 7 and Title 12 among the various divisions of the department so as to integrate the work properly and to promote the most economical and efficient administration of the department. Powers and duties given to the commissioner or the department in this Title, Title 7 or Title 12 must be assumed and carried out by the divisions that the commissioner designates and may in turn be delegated to subordinates by division directors with the approval of the commissioner.

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

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

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

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

§ 205. Department organization; divisions

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

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

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

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

4. Division of Quality Assurance and Regulation. The Division of Quality Assurance and Regulation, whose director must be qualified by training, experience and skill in food quality and regulatory inspections;

5. Division of Animal and Plant Health. The Division of Animal and Plant Health, whose director must be qualified by training, experience and skill in scientific crop and animal production;

6. Division of Geology and Natural Areas. The Division of Geology and Natural Areas, whose director must be qualified by training, experience and skill in geology, natural areas or applied natural sciences; and

7. Division of Land Use Planning, Permitting and Compliance. The Division of Land Use Planning, Permitting and Compliance, whose director must be qualified by experience in planning and administration. The director provides the principal administrative, operational and executive support to the Maine Land Use Regulation Commission. The director is subject to appointment and removal by the commissioner, with the consent of a majority of members of the Maine Land Use Regulation Commission.

PART B

Sec. B-1. Transition. Notwithstanding the Maine Revised Statutes, Title 7 and Title 12, the following provisions apply to the reassignment of the duties and responsibilities of the Department of Agriculture, Food and Rural Resources and the Department of Conservation to the Department of Agriculture, Conservation and Forestry.

1. The Department of Agriculture, Food and Rural Resources and the Department of Conservation as heretofore created and established by law are incorporated into the Department of Agriculture, Conservation and Forestry. All references to, responsibilities of and authority conferred upon the Department of Agriculture, Food and Rural Resources and the Department of Conservation, and those departments' predecessors, throughout the Maine Revised Statutes are deemed to refer to and vest in the Department of Agriculture, Conservation and Forestry created by this Act, as the successor department. The Department of Agriculture, Conservation and Forestry is the successor in every way to the powers, duties and functions as assigned in the Maine Revised Statutes, Title 7 to the Department of Agriculture, Food and Rural Resources and Title 12 to the Department of Conservation, as they pertain to services provided in agriculture, conservation and forestry under this Act.

2. Notwithstanding the provisions of the Maine Revised Statutes, Title 5, all accrued expenditures, assets, liabilities, balances of appropriations, allocations, transfers, revenues or other available funds in an account or subdivision of an account of the Department of Agriculture, Food and Rural Resources and the Department of Conservation that pertain to the duties of the Department of Agriculture, Conservation and Forestry as set forth in this Act must be transferred to the proper accounts of the Department of Agriculture, Conservation and Forestry by the State Controller or by financial order upon the request of the State Budget Officer and with the approval of the Governor.

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

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

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

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

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

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

Sec. B-2. Conflicts and inconsistencies. If the Commissioner of Agriculture, Conservation and Forestry finds a conflict or inconsistency between provisions in the Maine Revised Statutes, Title 7 and Title 12 or rules adopted under those titles, the commissioner shall attempt to resolve that conflict or inconsistency by interpreting the laws or rules together to give effect to the intent of the Legislature or agency, as the case may be. If the commissioner determines rulemaking is required to resolve a conflict or inconsistency, the commissioner may adopt rules as authorized under Title 12-A, section 204, subsection 2. In adopting rules under this section, the commissioner has sole discretion to determine whether an emergency exists. The commissioner shall notify the members of the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters prior to adopting any emergency rule under this section.

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

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

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

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

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

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

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

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

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

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

PART C

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

§ 7-B. Use of state vehicles for commuting

A state-owned or state-leased vehicle may not be used by any employee to commute between home and work, except for those vehicles authorized and assigned to employees of the Baxter State Park Authority and to law enforcement officials within the following organizational units: Bureau of

State Police; Maine Drug Enforcement Agency; Office of the State Fire Marshal; the division within the Department of Public Safety designated by the Commissioner of Public Safety to enforce the law relating to the manufacture, importation, storage, transportation and sale of all liquor and to administer those laws relating to licensing and collection of taxes on malt liquor and wine; Bureau of Motor Vehicles; Bureau of Marine Patrol; ~~Bureau of Forestry, Division of Forest Protection~~the forest protection unit within the Division of Forestry; Bureau of Warden Service; and ~~Bureau of Parks and Lands~~Division of Parks and Public Lands.

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

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

Sec. C-3. 12 MRSA §8003, sub-§3, ¶M, as amended by PL 1999, c. 155, Pt. A, §2, is further amended to read:

M. Except for lands acquired under the authority of paragraph N, the director is authorized, with the consent of the commissioner, to sell, grant, lease, transfer or otherwise convey any real or personal property under the jurisdiction of the ~~bureau~~division. The director shall deposit the proceeds from the sale or lease of property into the ~~Division of Forest Protection Account~~forest protection unit account.

At least 60 days prior to offering any surplus property for sale under this paragraph, the director shall notify the Executive Director of the Legislative Council and the joint standing committee of the Legislature having jurisdiction over forest resources of the director's intent to sell the property.

Sec. C-4. 12 MRSA §8003, sub-§3, ¶M-1, as amended by PL 1999, c. 155, Pt. A, §3, is further amended to read:

M-1. The proceeds under paragraph M may be used only to upgrade existing structures owned by the ~~Division of Forest Protection~~forest protection unit within the division, to consolidate operations of the ~~division~~unit through the improvement, repair, replacement, purchase or construction of structures and to purchase land upon which to build structures. Ownership of any land purchased under this paragraph or structures purchased or constructed under this paragraph must be held in the name of the ~~division~~unit. Ownership of land or property purchased under this paragraph may also be held in the name of the Bureau of General Services when the ~~division~~unit participates in the consolidation of facilities with other state agencies. Any purchase of land or a structure pursuant to this paragraph must be approved by the Director of the Bureau of General Services.

Sec. C-5. 12 MRSA §8901, sub-§1, as amended by PL 1999, c. 155, Pt. A, §4, is further amended to read:

1. Appointment. The Director of the ~~Bureau~~Division of Forestry shall appoint forest rangers, subject to the Civil Service Law and the State Supervisor, ~~Division of Forest Protection~~of the forest protection unit of the Division of Forestry. Rangers assigned to posts at Clayton Lake, St. Pamphile, Estcourt Station, Daaquam, Musquacook Lake, Snare Brook and Baker Lake must be bilingual in French and English.

PART D

Sec. D-1. 2 MRSA §6, sub-§1, as repealed and replaced by PL 2005, c. 397, Pt. A, §1, is amended to read:

1. Range 91. The salaries of the following state officials and employees are within salary range 91:

Commissioner of Transportation;

~~Commissioner of Conservation;~~

Commissioner of Agriculture, Conservation and Forestry;

Commissioner of Administrative and Financial Services;

Commissioner of Education;

Commissioner of Environmental Protection;

Executive Director of Dirigo Health;

Commissioner of Public Safety;

Commissioner of Professional and Financial Regulation;

Commissioner of Labor;
Commissioner of Agriculture, Food and Rural Resources;
Commissioner of Inland Fisheries and Wildlife;
Commissioner of Marine Resources;
Commissioner of Corrections;
Commissioner of Economic and Community Development;
Commissioner of Defense, Veterans and Emergency Management; and
Executive Director, Workers' Compensation Board.

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

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

Director, Bureau of General Services;
Director, Bureau of Alcoholic Beverages and Lottery Operations;
State Budget Officer;
State Controller;
~~Director of the Bureau of Forestry;~~
Director, Division of Forestry;
Director, State Planning Office;
Director, Energy Resources Office;
Director of Human Resources;
~~Director, Bureau of Parks and Lands;~~
Director, Division of Parks and Public Lands;
Director of Econometric Research; and
Director of the Governor's Office of Communications.

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

5. Range 86. The salaries of the following state officials and employees are within salary range 86:

Director of Labor Standards;
State Archivist;
~~Director, Bureau of Geology and Natural Areas;~~
~~Executive Director, Maine Land Use Regulation Commission;~~

Director, Division of Geology and Natural Areas;

Director, Division of Land Use Planning, Permitting and Compliance;

Chair, Maine Unemployment Insurance Commission;

Child Welfare Services Ombudsman; and

Director of the Maine Drug Enforcement Agency.

PART E

Sec. E-1. Appropriations and allocations. The following appropriations and allocations are made.

CONSERVATION, DEPARTMENT OF

Office of the Commissioner 0222

Initiative: Reduces funding by eliminating one Commissioner of Conservation position. This initiative relates to the creation of the new Department of Agriculture, Conservation and Forestry.

| GENERAL FUND | 2011-12 | 2012-13 |
|-------------------------------|---------|-------------|
| Positions - Legislative Count | 0.000 | (1.000) |
| Personal Services | \$0 | (\$139,980) |
| GENERAL FUND TOTAL | \$0 | (\$139,980) |

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill establishes the Department of Agriculture, Conservation and Forestry, and:

1. It directs the Department of Agriculture, Conservation and Forestry to assume the duties and responsibilities of the current Department of Agriculture, Food and Rural Resources and the current Department of Conservation;

2. It does not repeal any provisions of the Maine Revised Statutes, Title 7, which sets forth the laws and policies implemented by the current Department of Agriculture, Food and Rural Resources, or of Title 12, which sets forth the laws and policies implemented by the current Department of Conservation; and

3. It eliminates one commissioner position.