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CHAPTER 19

State Government
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This chapter is limited in scope: it reports on only those 1954 developments in Massachusetts law which have had or promise to have some noteworthy effect on the organization or internal operations of the executive branch of the state government, and which, because of their nature, cannot more logically be discussed in other chapters in the Survey. As it turns out, all those developments are statutory.

A proposed constitutional amendment to provide a four-year term for the Governor and five other constitutional officers was approved by the General Court. Statutes enacted in 1954 established three new divisions in existing state departments and a new agency under the Governor and Council. Reorganization of various state agencies continued during 1954 with statutes passed affecting the Department of Agriculture, state personnel administration, and the Division of Smoke Inspection in the Department of Public Utilities.

§19.1. Proposed four-year term for Governor and other constitutional officers. In his Annual Message to the General Court in 1954, Governor Herter made clear his view that the present two-year term for the chief executive is undesirable:

> Throughout nearly all phases of the programs of its various departments Massachusetts has suffered more and lost more, in my opinion, because of the lack of long range planning than from any other single cause. A governor is in office for only a year when he must turn his thoughts to a campaign for reelection, if, indeed he wants to stay in office long enough to finish what he has started. Two years is not a long enough time for any governor to plan, initiate, and carry out a full program.¹

Subsequently, by a special message,² he proposed that the Constitution be amended to provide for quadrennial election of the Governor, Lieutenant Governor, State Secretary, Treasurer and Receiver General, At-

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§19.1 ¹ Senate No. 1, p. 7 (1954).
² House No. 2446 (1954).
By majority vote of the Senate and House, in joint session on May 20, 1954, a proposed amendment³ to Article LXIV of the Amendments to the Constitution was approved which would provide four-year terms for the foregoing six state officers; the two-year terms of Councillors, Senators, and Representatives were not altered. If so approved again during the 1955 session of the General Court, and then ratified at the state election in 1956, the amendment will first apply to the officers elected in 1958.

§19.2. Division of Special Education. Chapter 514 of the Acts of 1954 is designed to clarify, broaden, and give new force to the longstanding duty of the localities to provide special education for certain mentally retarded or physically handicapped children.

The Division of Special Education is created in the Department of Education to “direct and supervise” such education and to be “responsible for” compliance by cities and towns with the “special classes” program required by the General Laws, Chapter 71, Sections 46 and 46A. In addition, from the state income tax, the Commonwealth is to reimburse the localities for one half of their expenses for the “instruction, training and support” of children in special classes for the mentally retarded.

The Division consists of its director, who is appointed by the Board of Education. Under him are “supervisors,” also appointed by the Board, to whom may be assigned such functions within the area of the Division’s responsibility as the Director and Board “deem advisable.”

§19.3. Division of Public Charities. For over a hundred years the Attorney General has had the power and duty to “enforce the due application of funds given or appropriated to public charities within the commonwealth, and [to] prevent breaches of trust in the administration thereof.”¹ In practice, however, it has been impossible for him to discharge that responsibility systematically and fully: he has never had a staff adequate for the purpose, nor has the law ever required that he be furnished regularly with the essential information. A clear explanation of the difficulties, with recommended legislation to remove them, was given by the late Robert T. Bushnell in his January 10, 1945, report as Attorney General.² Chapter 529 of the Acts of 1954 enacts many of those recommendations.

In the Department of the Attorney General there is established a Division of Public Charities, under “the direction and control” of the Attorney General, the “executive and administrative head” of which

* Senate No. 763 (1954).

³ Senate No. 763 (1954).

¹ G.L., c. 12, §8.

is an assistant attorney general designated as "Director of Public Charities." Before engaging in charitable work or raising funds in the Commonwealth, foreign charitable corporations, excepting certain veterans' organizations, must file with the Division certified copies of their incorporation papers and other information which from time to time may be called for; and detailed annual reports from "every public charity," excepting those serving religious purposes, are required. The Attorney General is to be made a party to all judicial proceedings "in which he may be interested in the performance of his duties" under the above-quoted excerpt from the General Laws, Chapter 12, Section 8. Subject to court approval, he is given power to "investigate the administration of any charity" and to summon witnesses. The General Laws, Chapter 68, Section 15, and Chapter 180, Sections 12 and 12A, intended to require charities to report annually to the Department of Public Welfare, are repealed.

§19.4. Division and Council on the Employment of the Aging; Council for the Aging. Creation of these new state agencies resulted in large measure from the highlighting which was given problems of the aging by the December 11, 1953, Report of the Governor's Committee to Study State Hospitals.

The nonsalaried Council on the Employment of the Aging established by Chapter 578 of the Acts of 1954 in the Department of Labor and Industries consists of ten members. Seven are appointed by the Commissioner of Labor and Industries as follows: two each from representatives of employees, employers and "qualified organizations engaged in social work," and one representative of the public, who serves as chairman; ex-officio members are the Assistant Commissioner of Labor and Industries (who, in accordance with the General Laws, Chapter 23, Section 1, must be a woman), the chairman of the Massachusetts Commission Against Discrimination, and the Director of Employment Security or his authorized representative. The Council is to perform, "in cooperation with" the Assistant Commissioner, a number of specified duties, including the development "through research and education" of programs to "eliminate age as a barrier to employment," to further "the rehabilitation and training of the aging," and to "Help to prepare the aging for retirement." In performing its duties the Council is not to be bound by "any arbitrary age limit, but shall use its discretion in preparing workers in general against the advance of age."

The Division on the Employment of the Aging established by the same statute is under the "direct supervision" of the Assistant Commissioner, who is to be aided by "necessary" employees and "technical experts" whom she, not the Commissioner, appoints, subject to the civil service law. It appears that the function of the Division is to help and give practical effect to the work of the Council.

Less concrete responsibilities are assigned to the Council for the Aging set up under the Governor and his Council by Chapter 537 of the Acts of 1954. Establishment of this agency was expressly recommended

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by the Governor’s Committee to Study State Hospitals. It is to “act in an advisory and consultative capacity with the general objective of coordinating within the several departments of the commonwealth programs designed to meet the problem of the aging . . . .” It is a nonsalaried board consisting of the Commissioner of Education, Commissioner of Mental Health, Commissioner of Public Health, Commissioner of Public Welfare, Commissioner of Labor and Industries, or their representatives, and four additional members appointed by the Governor with the advice and consent of his Council. The Governor designates the chairman from time to time.

§19.5. New England Board of Higher Education. This agency of the New England States is to be established if and when two or more of those states ratify a proposed interstate compact which would incorporate the agency and specify its powers in considerable detail. By Chapter 589 of the Acts of 1954, Massachusetts became the first, and so far the only, state to ratify the compact.

The primary purpose of the compact is to pool the resources of the compacting states in meeting the needs of each for “acceptable, efficient educational facilities . . . in the fields of medicine, dentistry, veterinary medicine, and other fields of technical, professional and graduate training.” The Board is to have three members from each compacting state; those from Massachusetts are to be appointed for staggered, eventual six-year terms by the Governor, with the advice and consent of the Council. Without prior and due authorization from a state, its credit or funds cannot be committed by the Board. The Board is to make contracts with any of the compacting states or agencies thereof and with educational institutions to provide the services and facilities required; and so far as adequate service in its judgment can thereby be secured, the Board’s agreements are to be with “then existing institutions.” Expenses are to be allocated among the compacting states on the basis of the number of students from each state covered by the contracts.

§19.6. Reorganization of the Department of Agriculture. Chapter 631 of the Acts of 1953, which reorganized the Department of Conservation, renaming it the Department of Natural Resources, delegated to the nonsalaried, five-member Board of Natural Resources, appointed by the Governor, with the advice and consent of the Council, authority to appoint and remove the Commissioner of Natural Resources, the “executive and administrative” officer of the Department. Though the act gave the several statutory division directors various specific powers and duties, it also provided that the Commissioner “shall exercise supervision, direction and control” over all the divisions and that division directors not under the civil service law should be appointed and removable by him, with the approval of the Board.

§19.6. Excepting the Division of Fisheries and Game, which, though a division of the Department, is under the supervision and control of the autonomous Fish and Game Board, separately appointed by the Governor, with the advice and consent of the Council.
In many respects the statute followed the form of organization of the Department of Education. In both instances the purpose was to remove from selfish political pressures brought to bear on every Governor important state activities which, it was believed, singularly lent themselves to nonpartisan administration by specialists.

Of course, despite such removal, the activities continue to be those of state agencies, and in the eyes of many voters the Governor continues to be responsible for the agencies' performance. It remains to be seen, therefore, whether over the long term the public interest will on balance best be served by an administrative device which, while affording some protection against selfish political pressures on a Governor, also makes it difficult for him to use the executive and political power of his office to advance or reform, if need be, the work of the specialists.

Chapter 674 of the Acts of 1954 presents an interesting adaptation of this device to the Department of Agriculture. The act provides for a seven-member Board of Agriculture appointed by the Governor, with the advice and consent of the Council. Each member must be from a different county and four must be "farmers whose principal vocation is the production of food or fibre." The former Advisory Board is abolished.

The Commissioner is appointed for a four-year term by the Governor, with the advice and consent of the Council, "from a panel of not less than three names submitted by the board." Likewise the Assistant Commissioner, whose term is not specified, is appointed by the Governor from a similar panel. In addition, the Commissioner's appointment of division directors and "scientific experts" required by the Department is subject to the Board's approval.

It is also interesting to note that though the Department is "under the supervision and control of" the Board, the statute also specifies that the Commissioner "shall be the executive and administrative head of the department and shall have charge of the administration and enforcement of all laws which it is the duty of the department to administer and enforce, and shall direct all inspections and investigations." Thus, under the law at least, the Commissioner would be in a strong position to assert his independence of any higher executive authority — the Board as well as the Governor.

§19.7. Personnel administration. Chapter 680 of the Acts of 1954 is based largely on Appendices A and D of the Fourteenth Report of the Special Commission on the Structure of the State Government ("Baby Hoover" Commission). It makes detailed changes in many of the provisions of Chapters 7 and 30 of the General Laws relating to personnel administration by the Commonwealth. Among the more significant are the following, listed in the order in which they appear in the act:

1 G.L., c. 15.
2 G.L., c. 20, §1, as amended by Acts of 1954, c. 674.
3 Id. §3.

§19.7. 1 House No. 2352 (1954).
1. Express provision is made for in-service training of state employees, and the Director of Personnel and Standardization is made responsible for organizing, developing, and generally directing such training. §3.

2. A “central personnel register” of all employees of the Commonwealth is to be established and maintained by the Division of Personnel and Standardization. §6.

3. The Director of Personnel and Standardization is to “establish, administer and keep current and complete an office and position classification plan and a pay plan” for all offices and positions in the executive branch of the state government. The statute specifies certain criteria to be applied by the Director in classifying offices and positions and allocating them to salary grades, and requires the Director to adopt and make public appropriate rules governing “the establishment and administration” of the plans. Actions by the Director in performing these duties are subject to the approval of the Commission on Administration and Finance rather than, as was the prior practice, of the Governor and Council. §9.

4. Individual salary increases, heretofore frequently the result of personal lobbying before the legislature by the employees concerned, are not now to be made unless and until (i) a written recommendation or request for the increase has been made by or to the Director of Personnel and Standardization, (ii) he has investigated the matter in accordance with the methods and procedures required by the statute, and (iii) he has filed with the Chairman of the Commission on Administration and Finance, the Budget Commissioner, and the House and Senate Committees on Ways and Means a written report on such investigation. §14.

5. Specifications for state offices and positions subject to the civil service law are to be worked out jointly by the Director of Personnel and Standardization and the Director of Civil Service, with the Commission on Administration and Finance empowered to settle any differences between them. §§9, 17.

Several other developments in the area of state personnel administration may also be mentioned here.

Chapter 267 of the Acts of 1954 removes the phrase “who is willing to accept” from the first sentence of the General Laws, Chapter 31, Section 15, Par. A. That paragraph permits noncompetitive promotions of certain senior state civil service employees. The purpose of the amendment is to prevent the possibility of pressure being put on an employee to refuse such a promotion so that it may be given to another employee junior to him.

Chapter 376 of the Acts of 1954 broadens another paragraph of the General Laws, Chapter 31, Section 15, to provide expressly for emergency appointments of “laborers,” without the requisitions otherwise required under the civil service law. Such an appointment must be limited in time to a maximum of sixty days within the twelve consecu-
tive months following it. The amendment was sought by the Department of Public Works to expedite recruitment of personnel for snow removal and other temporary road maintenance work.

Chapter 597 of the Acts of 1954 requires that certain "temporary" positions which have existed for three years or more be converted into "permanent" positions. In effect the statute acknowledges that the positions covered have become essential to continuing state activities. Thereby it alleviates administrative difficulties which, under the appropriation and civil service laws, result from the distinction between "permanent" and "temporary" positions; it should also reduce employee turnover in the positions. The action was recommended by the Special Commission on the Structure of the State Government in its Fourteenth Report, mentioned above.

And, finally, it is worthy of note that by Chapter 546 of the Acts of 1954 the Commonwealth has adopted the "suggestion award" practice common in private industry. The program is to be administered under the Commission on Administration and Finance. Employee suggestions for increasing the efficiency of the state service are to be judged by a Suggestions Award Board, and rewarded by cash prizes or certificates of merit.

§19.8. Division of Smoke Inspection. Chapter 672 of the Acts of 1954 transfers all personnel of the Division of Smoke Inspection in the Department of Public Utilities to the Department of Public Health, presumably there to work with the Chief Sanitary Engineer. The statute also makes substantive changes in prior laws designed to control atmospheric pollution, delegating considerable authority to local boards of health.1

§19.9. The Fiscal Survey Commission. Chapter 20 of the Resolves of 1954 establishes the bipartisan Fiscal Survey Commission and defines its immense task. The scope of its investigation seems just about as broad as any that could be given a special commission. It is directed to study not only more than a dozen vital "fiscal practices and policies" of the Commonwealth but also various reports previously made by the Special Commission on Taxation, Special Commission on the Structure of the State Government, Governor's Committee on Hospitals, "and any other special commission," as well as certain bills subsequently referred to it by the 1954 session of the General Court. The Commission is to report by February 15, 1955.