
[Motion (Graham) to amend proposed new draft Senate, No. 1026 (moved by Senator Kenneally) for Senate Bill No. 1034.]

The Commonwealth of Massachusetts

In The Year One Thousand Nine Hundred and Sixty-Three.

Mr. Graham moves that the proposed new draft be amended by striking out all after the enacting clause and inserting in place thereof the following:

1 SECTION 1. Chapter 16 of the General Laws is hereby
2 amended by striking out sections 2, 4, 5A, 6 and 7 and insert-
3 ing in place thereof the following five sections:

4 *Section 1.* There shall be a department of public works, in this
5 chapter called the department, which shall be under the super-
6 vision and control of a public works commission, in this
7 chapter called the commission. Said commission shall consist
8 of five members, not more than three of whom shall be of
9 the same political party, who shall be appointed by the govern-
10 or, with the advice and consent of the council. Upon the
11 expiration of the term of each member his successor shall be
12 be appointed, in like manner, for a term of five years. One
13 member shall be a person with expert knowledge of and skill
14 in the field of business management, another member shall
15 be a person with expert knowledge of and skill in the field
16 of finance, another member shall be a person with expert
17 knowledge of and skill in engineering. The governor shall
18 from time to time designate one member of the commission
19 as the commissioner of public works, in this chapter called the
20 commissioner, and the other four members shall be associate
21 commissioners. The commissioner shall be the chairman of
22 the commission. The commissioner shall receive a salary of
23 twenty-thousand dollars and each of the associate commis-
24 sioners shall receive a salary of eighteen thousand dollars
25 and each shall devote his full time during business hours to

26 the duties of his office and each shall give to the state treas-
27 surer a bond for the faithful performance of his official duties
28 in a penal sum and with sureties approved by the governor. The
29 commissioner shall be the executive and administrative head
30 of the department and he shall be responsible for administer-
31 ing and enforcing the provisions of this chapter relative to the
32 department and to each division thereof under his control and
33 supervision.

34 *Section 2.* There shall be in the department the following
35 five divisions: administrative services, highway engineering,
36 highway construction, highway maintenance, and waterways.
37 Each such division shall be under the direction, control and
38 supervision of the commissioner. The commissioner shall assign
39 to all officials, agents and employees of the department their
40 respective duties. He shall be in charge of one of the above
41 divisions, and shall assign each associate commissioner to be
42 in charge of one of the other divisions, subject to his control
43 and supervision, and he may from time to time change such
44 assignments. He may also authorize the associate commis-
45 sioners or any of them to exercise in his name any power, or
46 to perform in his name any duty, assigned to him by law, and
47 he may at any time revoke any such authority.

48 *Section 3.* The commissioner shall from time to time estab-
49 lish such bureaus, sections, and district and other offices as
50 shall be necessary for efficient and economical administration
51 of the work of the department, and, if necessary for such pur-
52 pose, may from time to time consolidate or abolish the same.
53 The commissioner shall prepare and keep current a general
54 statement of such organization of the department, of the
55 assignment of functions to its various administrative units, offi-
56 cials and employees, and of the established places at which and
57 methods whereby the public may secure information or make
58 requests, such statement to be known as the department's
59 "description of organization". He shall file with the state
60 secretary an attested copy of such description and of each
61 amendment thereto.

62 *Section 4.* The commissioner shall appoint and remove all
63 employees in the department under the public works commis-

64 sion. Unless otherwise provided by law, all such appointments
65 and removals shall be made in accordance with chapter thirty-
66 one. From time to time the commissioner may, subject to ap-
67 propriation and regulation, employ such consultants as he may
68 deem necessary.

69 The commissioner may appoint and remove without regard
70 to chapter thirty-one, but with the approval of the governor,
71 a chief engineer, an executive assistant, and a chief counsel
72 to serve in the office of the commissioner; four deputy chief
73 engineers, each to serve in one of the four divisions of high-
74 way engineering, highway construction, highway mainten-
75 ance, and waterways; and a director to serve in the division
76 of administrative services. The commissioner may similarly
77 appoint and remove other experts and assistants; provided,
78 however, that the total number of appointments to be made by
79 the commissioner under this paragraph shall not exceed twelve.
80 No person holding appointment under this paragraph shall be
81 subject to chapter thirty-one or to section nine A of chapter
82 thirty.

83 So far as practicable in the judgment of the commissioner,
84 appointments to positions not classified under chapter thirty-
85 one shall be made by promoting employees of the common-
86 wealth serving in positions so classified, except that any person
87 appointed to the position of chief engineer or deputy chief en-
88 gineer shall be a person of experience and skill as an engineer
89 in the activities of the department and shall be chosen from
90 the employees who hold an office or position with permanent
91 status in the department classified under chapter thirty-one,
92 and in every such instance, upon termination of his service
93 in such unclassified position, the employee shall be restored
94 to the position from which he shall have been promoted or to
95 a position equivalent thereto in salary grade in the same state
96 agency or if he shall have been promoted in accordance with
97 chapter thirty-one of the general laws during his promotion in
98 the unclassified position, to the position to which he was so
99 promoted, or to a position equivalent thereto in salary grade
100 in the same state agency. In every instance of an employee
101 promoted from a position in which at the time of promotion

102 he shall have tenure by reason of section nine-A of chapter
103 thirty, upon termination of his service in such unclassified
104 position the employee shall be restored to the position from
105 which he shall have been promoted or to a position equivalent
106 thereto in salary grade in the same state agency. In cases of
107 restoration under said chapter thirty-one or under section
108 nine A of said chapter thirty such restorations shall be with-
109 out impairment of civil service status or tenure by reason of
110 said section nine A, and without loss of the seniority, retire-
111 ment and other rights to which uninterrupted service in that
112 position would have entitled him, provided, however, that if
113 his service in such unclassified position shall have been termi-
114 nated for cause, his right to be so restored shall be determined
115 by section forty-three of chapter thirty-one. During the period
116 of such appointment the person so appointed shall be eligible
117 to take any competitive promotional examinations to which
118 he would have otherwise been eligible. Nothing in this section
119 shall be deemed to exempt the positions named herein from the
120 promotions of sections forty-five to fifty, inclusive, of chapter
121 thirty.

122 *Section 5A.* The commission shall hold regular bi-weekly
123 meetings in Boston, and may, following reasonable notice to
124 each member, meet anywhere in the commonwealth at any
125 other time upon the call of the commissioner. Three members
126 shall constitute a quorum. Each member shall have one vote,
127 and the concurrence of a majority of the members present in
128 any vote of the commission, there being a quorum, shall be
129 required to make such vote effective.

130 The commission shall have a secretary, appointed by the
131 governor with the advice and consent of the council, who shall
132 receive a salary of twelve thousand dollars. The secretary
133 shall have the duty and responsibility of keeping the minutes
134 of the commission, shall have custody of the official documents
135 and papers of the commission and of the department, and of
136 the official seal of the commission, of which judicial notice
137 shall be taken.

138 In addition to exercising the powers and performing the du-

139 ties assigned to it by law, the commission shall have the fol-
140 lowing powers and duties:

141 (a) It shall approve all contracts, including specifications,
142 made by the department, and any changes, alterations, amend-
143 ments, or modifications thereof.

144 (b) It shall act as a board of contract appeals, and shall ap-
145 prove or disapprove all claims made under any contract with
146 the department. To assist the commission in performing this
147 function, the commissioner with the approval of the governor
148 shall appoint a person of legal training and experience, who
149 shall be a member of the bar of the commonwealth, to the
150 position of hearing examiner, who may be removed for cause
151 in like manner. The hearing examiner shall receive a salary of
152 fourteen thousand dollars and shall devote his entire time dur-
153 ing business hours to the duties of his position.

154 The hearing examiner shall hear all claims by contractors
155 from determinations of the department, and shall, after hear-
156 ing, render to the commission a report of the matter including
157 a recommendation as to the disposition of the claim. Such
158 hearings shall be conducted as adjudicatory proceedings under
159 chapter thirty A. Such reports shall be maintained as public
160 records in a place and form fully accessible to the public. Any
161 person aggrieved by a decision of the commission acting as a
162 board of contract appeals shall have the right to bring suit
163 against the commonwealth for recovery of damages based on
164 a claim made under any contract with the department as
165 authorized under the provisions of chapter two hundred and
166 fifty-eight.

167 (c) It shall make, and from time to time revise, regulations
168 for the conduct of the business of the department, and all regu-
169 lations otherwise required by the department by law.

170 (d) It shall prepare and submit to the governor and the
171 general court an annual report containing in substance the
172 description of organization of the department, reviewing the
173 work of the department, recommending legislation and other
174 action by the governor and the general court, and containing
175 such other information relating to highways as may be appro-
176 priate. It shall include in such annual report such information

177 as may be required by the commissioner of administration, and
178 shall from time to time submit such other reports as he may
179 require.

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