

# MAINE STATE LEGISLATURE

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D. S. O. P.

STATE OF MAINE  
SENATE (Filing No. S-287)  
108TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 493, L.D. 1768, Bill, "AN ACT to Create the Maine Administration Procedure Act."

Amend the bill in the Title by striking out the word "Administration" and inserting in its place the word 'Administrative'

section 1 in  
Further amend the bill in that part designated "§1151." in subsection 1 by striking out all of the 2nd underlined sentence and inserting in its place the following:

'The Administrative Court shall consist of the Administrative Court Judge and an Associate Administrative Court Judge.'

section 1 in  
Further amend the bill in that part designated "§1151." by striking out all of subsection 2 and inserting in its place the following:

'2. Licensing jurisdiction. Except as provided in Title 5, section 10004 and Title 29, chapter 17, the Administrative Court shall have exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act

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within a reasonable time, upon complaint of the Attorney General, to revoke or suspend licenses issued by the agency.'

Further amend the bill in section 1 in that part designated "§1151." in subsection 3 in paragraph D in the 2nd line (first line in L.D.) by inserting after the underlined word "agency" the underlined words 'or the Attorney General'

Further amend the bill in section 3 in that part designated "§8002." in subsection 7 in pararaph B at the end by striking out the underlined "or" and inserting in its place the underlined word 'and'

Further amend the bill in section 3 in that part designated "§8056." in subsection 1 by striking out all of paragraph B and inserting in its place the following:

'B. File a certified copy of the rule with the Secretary of State in a form prescribed by the Secretary of State, which form shall be susceptible to frequent and easy revision; and'

Further amend the bill in section 3 in that part designated "§8056." by striking out all of subsection 2 and inserting in its place the following:

'2. Form. With respect to every rule adopted by the agency and in effect, the agency shall print and compile and make available to any person, at each of its offices, for inspection at no charge and for copying with or without cost, as the agency shall determine, and for distribution free or at actual cost, complete sets of such rules currently in effect.'

Further amend the bill in section 3 in that part designated "§9055." in subsection 1 by inserting after the underlined word "Communication" the underlined word 'prohibited'

Further amend the bill/<sup>in</sup>section 3 in that part designated "§9055." in sbusection 2 by striking out the headnote "Prohibition." and inserting in its place the headnote 'Communication permitted.'

Further amend the bill in section 3 in that part designated "§9059." in subsection 4 by striking out the headnote "Part of the record." and inserting in its place the headnote 'Decision on the record.'

Further amend the bill in section 3 in that part designated "§10051." by striking out all of subsection 1 and inserting in its place the following:

'1. Jurisdiction. Except as provided in section 10004 and Title 29, chapter 17, the Administrative Court shall have

exclusive jurisdiction upon complaint of an agency to revoke or suspend licenses issued by such agency.'

Further amend the bill in section 3 in that part designated "§11002." in subsection 1 by striking out all of the first paragraph and inserting in its place the following:

Proceedings instituted.  
1. / Proceedings for judicial review of final agency action or the failure or refusal of an agency to act shall be instituted by filing a petition for review in the Superior Court for the county where:'

Further amend the bill in section 3 in that part designated "§11002." by striking out all of subsection 2 and inserting in its place the following:

'2. Petition; contents. The petition for review shall specify the persons seeking review, the manner in which they are aggrieved and the final agency action or agency inaction which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief, which may be in the alternative.'

Further amend the bill in section 3 in that part designated in subsection 3 "§11002."/by striking out all of the 3rd sentence and inserting in its place the following:

'If the review sought is from an agency's failure or refusal to act, the petition for review shall be filed within 6 months of the expiration of the time within which the action should reasonably have occurred.'

Further amend the bill in section 3 in that part designated "§11006." in subsection 1 in paragraph A in the first line by inserting after the underlined words "the case of" the underlined words 'the failure or refusal of an agency to act or of'

Further amend the bill in section 3 in that part designated "§11006." in subsection 1 in paragraph B in the 9th line (7th line in L.D.) by striking out the underlined word "earlier"

Further amend the bill in section 3 in that part designated "§11006." in subsection 2 by striking out the headnote "Reviewing court." and inserting in its place the headnote 'Corrections to record.'

Further amend the bill in section 3 in that part designated "§11007." in subsection 4 by striking out the headnote "Duties." and inserting in its place the headnote 'Decision.'

Further amend the bill in section 3 in that part designated "§11007." in subsection 4 in paragraph B in the 2nd line by inserting before the punctuation ";" the underlined words 'or direct the

agency to hold such proceedings or take such action as the court deems necessary'

Further amend the bill by inserting before section 5 the following:

'Sec. 4-A. Appropriation. There is appropriated from the General Fund the sum of \$17,700 for the fiscal year ending June 30, 1978 and the sum of \$104,000 for the fiscal year ending June 30, 1979. The breakdown shall be as follows:

	<u>1977-78</u>	<u>1978-79</u>
SECRETARY OF STATE		
Personal Services	(2) \$15,600	(2) \$20,200
All Other	600	800
Capital	<u>1,500</u>	<u>- 0 -</u>
Total	\$17,700	\$21,000
PUBLIC UTILITIES COMMISSION		
Personal Services		(4) \$68,000
All other		<u>15,000</u>
Total		\$83,000

(This appropriation shall be used to fund 4 attorney positions and their associated costs, and shall be expended only for the additional workload to the extent that such attorneys are needed to compensate/im- pared by the enactment of Title 5, section 9055).'

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Statement of Fact

The purposes of this amendment are to:

1. Permit the Attorney General to initiate license revocation or suspension proceedings in the administrative court, independently of the licensing agency;
2. Clarify that the Secretary of State is to prescribe the forms for rules only, not for agency instructions, forms and related materials;
3. Clarify that the same judicial review procedures apply to an agency's failure or refusal to act as to an agency decision which falls within the definition of "final agency action," and to provide remedies for such review; and
4. Correct certain errors in the bill.

It is the understanding and intention of the committee that Title 5, section 9051, subsection 2, is not intended to make the provision of Title 5, chapter 375, subchapter IV applicable to preproceeding determinations of the agency, including probable cause determinations.

An appropriation is included to fund activities of the Secretary of State's office to compile the rules of departments and agencies, and for the Public Utilities Commission to fund the additional workload that may result from prohibition in the bill on ex parte communication. The additional funds for the Public Utilities Commission are to be excluded only if they



are needed to compensate for additional workload imposed by this prohibition, and are not to be used for any other purpose. It is not expected that other State agencies will need additional funds, since currently there are statutory provisions covering many of the requirements of the bill, and these provisions will simply be replaced by the requirements of this bill. The Administrative Court may have a somewhat larger caseload because of the slight increase in its jurisdiction under this bill. An appropriations bill has been introduced to this session of the Legislature to fund an additional associate judge established by the 107th Legislature. The addition of this judge should provide staff sufficient to handle the caseload increase.

Reported by the Committee on State Government.

Reproduced and distributed pursuant to Senate Rule 11-A.

June 20, 1977

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