

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-1146)
108TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " A " to H.P. 2107, L.D. 2145, Bill,
"AN ACT to Conform State Statutes to the Maine Administrative
Procedure Act."

Amend the Bill by striking out everything after the title
and before the enacting clause.

Further amend the Bill by inserting after the enacting
clause the following:

'Sec. 1. 4 MRSA §8, 1st sentence, is amended to read:

The Supreme Judicial Court shall have the power to pre-
scribe, by general rules, for the Administrative, District and
Superior Courts of Maine, the forms of process, writs, pleadings
and motions, and the practice and procedure in civil actions at
law.'

Further amend the Bill in section 4 in the 4th line (3rd
and 4th lines in L.D.) by striking out the following: "and
Title 29, chapter 17," and inserting in its place the following:
'and, Title 29, chapter 17 and Title 35, section 1566,'

Further amend the Bill by striking out all of section 5

Further amend the Bill by striking out all of section 11 and
inserting in its place the following:

'Sec. 11. 4 MRSA §1157, as enacted by PL 1977, c. 551, §1,
is amended by adding at the end a new sentence to read:
The resulting Superior Court decision may be appealed by any
party thereto, in the same manner as in other civil cases, to the
Supreme Judicial Court sitting as the law court.'

Further amend the bill by striking out all of section 13 and inserting in its place the following:

'Sec. 13. 5 MRSA §593, as last amended by PL 1977, c. 427, is further amended by adding at the end a new paragraph to read:

A hearing before the State Personnel Board is an adjudicatory proceeding under the Maine Administrative Procedure Act, chapter 375, and shall be held in accordance with subchapter IV, section 9051, et seq.'

Further amend the Bill by inserting after section 29 the following:

'Sec. 29-A. 5 MRSA §8001, as enacted by PL 1977, c. 551, §3, is amended to read:

§8001. Short title

This chapter and Title 4, chapter 25 shall be known and may be cited as the "Maine Administrative Procedure Act."

Sec. 29-B. 5 MRSA §8002, 1st ¶, as enacted by PL 1977, c. 551, §3, is amended to read:

As used in this chapter Act, unless the context otherwise indicates, the following words and phrases shall have the following meanings.'

Further amend the Bill in section 30 by striking out all of paragraph A and inserting in its place the following:

'A. "Rule" means the whole or any part of every regulation, standard, code, statement of policy, or other agency statement of general applicability, including the amendment, suspension or repeal of any prior rule, that ~~has-the-force of-law-or-the-violation-of-which-may-result-in-the-imposition of-sanctions,~~ is or is intended to be judicially enforceable and implements, interprets or makes specific the law

administered by the agency, or describes the procedures or practices of the agency.'

Further amend the Bill in section 31 by striking out all of subparagraph (1) and inserting in its place the following:

'(1) Policies or memoranda concerning only the internal management of an agency or the State Government and not affecting the rights of or procedures available to any person judicially enforceable;'

Further amend the Bill in section 32 by striking out all of subparagraph (4) and inserting in its place the following:

'(4) Any form, instruction or explanatory statement of policy which in itself does not have force of law, or the violation of which is not punishable by any sanction is not judicially enforceable, and which is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges.'

Further amend the Bill in section 34 by inserting at the end the following:

'4. Collective bargaining. State personnel rules negotiated as part of any collective bargaining agreement.'

Further amend the Bill by inserting after section 34 the following:

'Sec. 34-A. 5 MRSA §8052, sub-§1, as enacted by PL 1977, c. 551, §3, is amended to read:

1. Notice; public hearing. Prior to the adoption of any rule, the agency shall give notice as provided in section 8053 and may hold a public hearing, provided that a public hearing shall be held if otherwise required by statute or requested by an interested person any 5 interested persons.

Sec. 34-B. 5 MRSA §8053, sub-§1, ¶B, as enacted by PL 1977, c. 551, §3, is amended by adding at the end a new paragraph to read:

Notification under this paragraph may be by delivery of a copy of the public hearing notice or other appropriate means to the Office of the Secretary of State.'

Further amend the Bill in section 35 by striking out all of the last underlined sentence and inserting in its place the following:

'Rules in effect prior to July 1, 1978, shall become void and of no legal effect on July 1, 1979, unless originally adopted after notice published in a newspaper of general circulation in some area of the State and opportunity for hearing or/adopted in accordance with chapter 375, subchapter II.'

Further amend the Bill by inserting after section 35 the following:

'Sec. 35-A. 5 MRSA §9051, sub-§1, as enacted by PL 1977, c. 551, §3, is amended to read:

1. Adjudicatory proceeding. In any adjudicatory proceeding, except those proceedings involving ~~either~~ correctional facilities, the Industrial Accident Commission or the State Parole Board, the procedures of this subchapter shall apply.'

Further amend the Bill in section 38 by striking out all of subsections 3 and 4 and inserting in their place the following:

'3. Health or safety hazard. The health or physical safety of a person or the continued well-being of a significant natural resource is in immediate jeopardy at the time of the agency's action, and acting in accordance with subchapter IV or VI would

fail to adequately respond to a known risk, provided that the revocation, suspension or refusal to renew shall not continue for more than 30 days;

4. Certified inspector. The action is based solely upon the physical test, examination or inspection by a state-certified inspector of any product, animal, material or equipment, from which the agency concludes that action in accordance with subchapter IV or VI would not adequately protect public health or safety, provided that action under this subsection shall not be effective for a period of more than 30 days;

5. Rules of sportsmanship. In the course of any professional sporting event directly regulated by an agency, the agency determines that a licensee has:

A. Engaged in physical contact which is prohibited by the rules of the sport with another contestant or official immediately before, during or immediately after the regulated sporting event;

B. Engaged in a use or administration of drugs which is prohibited by the rules of the sport;

C. Failed to disclose to proper authorities or officials a known medical or mental condition of a contestant which was required to be disclosed or which could affect the public health and safety; or

D. Failed to fulfill contracts or obligations to make

payments to contestants and officials for their participation in professional athletic events; provided that the revocation, suspension or refusal to renew shall not continue for more than 30 days; or

6. Horse racing. Violations of rules which occur at race tracks and cited by a commission, or its licensed designee, if acting in accordance with subchapters IV and VI would fail to immediately remedy the needs of the sport; provided that the revocation, suspension or refusal to renew shall not continue for more than 30 days.'

Further amend the Bill in section 39 in subsection 1 in the first and 2nd lines (first line in L.D.) by striking out "and Title 29, chapter 17," and inserting in its place the following: 'and, Title 29, chapter 17 and Title 35, section 1566'

Further amend the Bill in section 40 in the 3rd line (same in L.D.) by inserting after the word "review" the words 'or review of a pro forma judicial decree'

Further amend the Bill in section 150 by inserting after the amending clause the following:

'The commission may issue, in its discretion and under the name and seal of the commission, a license in writing to extend for one year, ~~unless-revoked-by-the-commission-for-cause,~~ to any person, club, association or corporation who or which is properly qualified, which will entitle him or it to conduct professional wrestling matches, shows or exhibitions for a period of one year from date of issuance, in accordance with this chapter and the rules and regulations adopted in pursuance thereof.

Sec. 150-A. 8 MRSA §135, 2nd ¶, 3rd sentence, as enacted by PL 1977, c. 13, is amended to read:

Upon the application for a license as enumerated, the chairman of the commission shall in his discretion temporarily issue or refuse to issue the license ~~or~~; he may upon information of violation of this chapter or the rules of the commission ~~temporarily~~ petition the Administrative Court to suspend or revoke a license for cause.

Sec. 150-B. 8 MRSA §135, last ¶, as enacted by PL 1977, c. 13, is amended to read:

Any person, club, association or corporation, or any official of a club, association or corporation who conducts a professional wrestling match, show or exhibition or who engages in or in any way takes part in a match, show or exhibition without first obtaining a license, or when the license has expired or has been suspended or revoked ~~by the commission~~ or temporarily suspended or revoked ~~by the chairman~~, shall be guilty of a Class D crime.'

Further amend the Bill in section 153 in that part designated "§279-B." by striking out all of the last 2 underlined paragraphs and inserting in their place the following:

'The commission is further authorized to establish a schedule of suspensions of licenses for each violation of the rules and regulations.

Any person aggrieved by any fine or suspension imposed by the commission may seek judicial review pursuant to the Maine Administrative Procedure Act.'

Further amend the Bill by inserting after section 155 the following:

Sec. 155-A. 9 MRSA §3740, sub-§2, as enacted by PL 1965, c. 501, §1, is amended to read:

2. Refuse to issue license. Refuse to issue the license for any reason for which he may ~~suspend, revoke or~~ refuse to renew or seek to suspend or revoke any license under this chapter.

Sec. 155-B. 9 MRSA §3745, 1st sentence, as last amended by PL 1975, c. 381, §4, is repealed and the following enacted in its place:

The superintendent may refuse to renew any license issued hereunder for any of the reasons stated in this section, provided that the licensee has first been given an opportunity for hearing in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, and the superintendent may file a complaint with the Administrative Court to suspend or revoke any license issued hereunder if, after investigation or hearing or both, the superintendent has reason to believe that the licensee or any owner, director, officer, member, partner, employee or agent of the licensee has:

Sec. 155-C. 9 MRSA §3751, as last amended by PL 1975, c. 381, §4, is further amended by adding at the end the following new sentence:

Actions of the commissioner pursuant to this section shall be conducted in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375.

Sec. 155-D. 9-A MRSA §2-303, as amended by PL 1975,
c. 135, §§ 1 and 2, is repealed and the following enacted in its
place:

§2-303. Revocation or suspension of license

1. The administrator may file a complaint with the
Administrative Court to suspend or revoke a license to make
supervised loans if the administrator finds reason to believe,
after investigation or hearing, or both, that:

A. The licensee has violated this Act or any rule or
order made pursuant to this Act; or

B. Facts or conditions exist which would clearly have
justified the administrator in refusing to grant a license
had these facts or conditions been known to exist at the
time the application for the license was made.

An affirmative finding by the Administrative Court of either
cause shall be sufficient to suspend or revoke the license.

2. No revocation or suspension of a license shall impair
or affect the obligation of any preexisting lawful contract
between the licensee and any debtor.

3. The administrator may reinstate a license, terminate a
suspension or grant a new license to a person whose license has
been revoked if no fact or condition then exists which clearly
would have justified the administrator in refusing to grant a
license.

Sec. 155-E. 9-A MRSA §6-106, sub-§3, last sentence, as enacted by PL 1973, c. 762, §1, is amended to read:

If the court determines that the respondent has committed any alleged contempt, the court shall punish the offender ~~as-if-the-contempt-has-occurred-in-an-action-arising-in-or-pending-in-such-court~~ in accordance with Title 5, section 9060, subsection 1, paragraph D.

Sec. 155-F. ^{9-A MRSA} §6-108, sub-§1, last ¶, last 3 sentences, as enacted by PL 1973, c. 762, §1, are repealed and the following enacted in their place:

The proceeding for review or enforcement is initiated and conducted in accordance with Title 5, chapter 375, subchapter VII.

Sec. 155-G. ^{9-A MRSA} §6-108, sub-§2, as enacted by PL 1973, c. 762, §1, is repealed.

Sec. 155-H. 9-A MRSA §6-108, sub-§4, 1st sentence, as enacted by PL 1973, c. 762, §1, is repealed.

Sec. 155-I. 9-A MRSA §6-108, sub-§5, as enacted by PL 1973, c. 762, §1, is amended to read:

5. A-proceeding-for-review-under-this-section-must-be-initiated-within-30-days-after-a-copy-of-the-order-of-the-administrator-is-received. If no proceeding is so initiated, the administrator, through the Attorney General, may obtain a decree of the Superior MRSA for enforcement of its order upon showing that the order was issued in compliance with this section, that no proceeding for review was timely initiated within-30 days-after-copy-of-the-order-was-received, and that the respondent is subject to the jurisdiction of the court. The decree of the Superior Court may also provide any relief available in an action brought under section 6-110.

Sec. 155-J. 9-A MRSA §6-402, sub-§5, as enacted by PL 1973, c. 762, §1, is repealed and the following enacted in its place:

5. "Rule" means a rule as defined in Title 5, section 8002, subsection 9.

Sec. 155-K. 9-A MRSA §6-404, as enacted by PL 1973, c. 762, §1, is repealed and the following enacted in its place:

§6-404. Procedure for adoption of rules

Rules adopted by the administrator, and amendments thereto, shall be adopted in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II.

Sec. 155-L. 9-A MRSA §6-405, as enacted by PL 1973, c. 762, §1, is repealed and the following enacted in its place:

§6-405. Taking effect of rules

Each rule hereafter adopted is effective 20 days after filing with the Secretary of State, except that, if a later date is specified in the rule, the later date is the effective date.

Sec. 155-M. 9-A MRSA §6-406, as enacted by PL 1973, c. 762, §1, is repealed.

Sec. 155-N. 9-A MRSA §6-407, as enacted by PL 1973, c. 762, §1, is repealed.

Sec. 155-O. 9-A MRSA §6-408, 1st sentence, as enacted by PL 1973, c. 762, §1, is amended to read:

The validity or applicability of a rule or ~~declaratory~~ advisory ruling may be determined in an action for declaratory judgment in the Superior Court, if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff as a creditor, consumer or potential consumer.

Sec. 155-P. 9-A MRSA §6-409, as enacted by PL 1973, c. 762, §1, is repealed and the following enacted in its place: §6-409. Advisory rulings by administrator

The administrator shall provide by rule for the filing and prompt disposition of petitions for advisory rulings as to the applicability of any statutory provision or of any rule of the administrator.

Sec. 155-Q. 9-A MRSA §6-410, as enacted by PL 1973, c. 762, §1, is repealed and the following enacted in its place: §6-410. Contested cases

In a contested case, all parties shall be afforded an opportunity for hearing, and proceedings shall be conducted in accordance with Title 5, chapter 375, subchapter IV.

Sec. 155-R. 9-A MRSA §6-414, sub-§2, as enacted by PL 1973, c. 762, §1, is amended to read:

2. Proceedings for review are instituted by filing a petition in the Superior Court within 30 days after mailing receipt of notice of the final decision of the administrator or, if a rehearing is requested, within 30 days after notice of the decision thereon. Copies of the petition shall be served upon the administrator and all parties of record. The petition shall be served and the proceedings conducted in accordance with the provisions of Title 5, chapter 375, subchapter VII.

Sec. 155-S. 9-A MRSA §6-414, sub-§§ 3, 4, 5, 6 and 7,
as enacted by PL 1973, c. 762, §1, are repealed.

Sec. 155-T. 9-A MRSA §6-415, as enacted by PL 1973, c. 762,
§1, is repealed.'

Further amend the Bill in section 156 in the last line
(same in L.D.) by inserting after the underlined word and figure
"subsection 4" the underlined words and figures 'and shall be
served not less than 30 nor more than 60 days prior to the date
set for the hearing'

Further amend the Bill in section 161 in the last line
(same in L.D.) by inserting after the underlined word "period"
the following: 'provided, however, the superintendent shall,
within 60 days of the close of the comment period or within 60
days of the conclusion of the hearing if such was held, whichever
period is greater, promulgate the final order either approving
or disapproving the application'

Further amend the Bill by striking out all of section 163
and inserting in its place the following:

'Sec. 163. 9-B MRSA §254, as amended by PL 1975, c. 666,
§13, is repealed.'

Further amend the Bill by striking out all of section 164
and inserting in its place the following:

'Sec. 164. 9-B MRSA §255, sub-§§2, 3 and 4, as enacted
by PL 1975, c. 500, §1, are repealed and the following enacted
in their place:

2. Request for rule making. Any person may petition the superintendent to hold a rule-making proceeding for the purpose of promulgating such rules, regulations or amendments as may be proposed in his petition and may petition for a hearing on the proposed rule, regulation or amendment.

3. Procedures for requesting hearing. A petition for a hearing pursuant to this section shall be made in accordance with regulations promulgated by the superintendent.

4. Grant or denial of request. Unless the superintendent shall deem a petition filed pursuant to subsection 1 frivolous or not bona fide, he shall designate the petitioner or petitioners as an interested party and hold a hearing for the purpose set forth in the petition. If the request is a petition for rule-making, within 60 days after receipt of the petition, the superintendent shall either notify the petitioner in writing of its denial and the reasons therefor, or initiate appropriate rule-making proceedings.'

Further amend the bill in section 225 by striking out all of the last 4 lines (last 3 lines in LD) and inserting in their place the following:

'Except as provided in this chapter, any hearings required or authorized under this subsection or subsection 8 shall be conducted in accordance with the requirements for rulemaking set forth in Title 5, chapter 375, subchapter II; provided that the requirements of Title 5, section 8052, subsection 5, section 8056, subsections 1, 3 and 4 and section 8057, subsection 2, shall not apply to these procedures.'

Further amend the bill by inserting after section 227 the following:

'Sec. 227-A. 12 MRSA §685-A, sub-§7, 8th ¶, as last amended by PL 1973, c. 569, §10, is further amended by adding at the end the following new sentences:

Notice of this adoption of land use maps, standards or amendments thereto shall be given by publication once in those newspapers in which notice to the public is provided for under this subsection. Notice of this adoption shall also be filed with the Secretary of State indicating, in addition, that current copies of land use maps and standards are on file in the commission's offices and the method by which copies may be obtained.

Sec. 227-B. 12 MRSA §685-A, sub-§8, 2nd ¶, as repealed and replaced by PL 1973, c. 788, §43-B, is amended by adding at the end the following new sentence to read:

The notification procedures set forth in Title 5, section 8053, shall not be required prior to the commission's action upon a petition by a landowner for revision to the district boundaries within his ownership unless the commission determines to hold a hearing prior to acting upon the petition; provided that, in any case, notice shall be given to all abutting land owners.'

Further amend the bill by inserting after section 235 the following:

'Sec. 235-A. 12 MRSA §685-C, sub-§8, 3rd ¶, as enacted by PL 1973, c. 569, §15, is amended by adding at the end the following new sentence to read:

This action may include, but is not limited to, proceedings to revoke or suspend any commission permit or approval, taken either before the commission itself in accordance with Title 5, section 10004, before the Administrative Court in accordance with Title 4, sections 1152 to 1157, or, notwithstanding the provisions of Title 4, section 1151, subsection 2, or Title 5, section 10051, before the Superior Court as part of an enforcement action brought by the commission.'

Further amend the bill by striking out all of section 236 and inserting in its place the following:

'Sec. 236. 12 MRSA §689, as last amended by PL 1975, c. 770, §65, is repealed and the following enacted in its place:

§689. Appeal

Persons aggrieved by final actions of the commission, including without limitation any final decision of the commission with respect to any application for approval or the adoption by the commission of any district boundary or amendment thereto, may appeal therefrom in accordance with Title 5, chapter 375, subchapter VII. The right

of appeal, with respect to any commission action to which the right may apply, shall be in lieu of the rights provided under Title 5, section 8058, subsection 1.'

Further amend the bill by striking out all of sections 241, 242 and 243 and inserting in their place the following:

'Sec. 241. 12 MRSA §1402, 1st ¶, 3rd sentence, as last amended by PL 1973, c. 460, §18, is repealed and the following enacted in its place:

When forest fire conditions become serious, the director may declare void permits already issued and, as to the actions, compliance with the provisions of Title 4, chapter 25, and Title 5, chapter 375, shall not be required.

Sec. 242. 12 MRSA §1402, last ¶, last sentence, as amended by PL 1973, c. 460, §18, is repealed and the following enacted in its place:

Whoever violates this paragraph shall have his permit revoked by the director, who, in taking this action, need not comply with the provisions of Title 4, chapter 25, and Title 5, chapter 375.'

Sec. 243. 12 MRSA §1551, 2nd ¶, 4th sentence, as last amended by PL 1973, c. 460, §18, is repealed and the following enacted in its place:

Whenever in the opinion of the director there is a serious forest fire hazard, due to dry weather conditions, he may prohibit all burning under this section and in such periods forest rangers and town forest fire wardens shall refuse all requests to burn and declare void all permits already issued, and, as to all such actions, compliance with the provisions of Title 4, chapter 25, and Title 5, chapter 375, shall not be required.'

Further amend the bill in section 267 by striking out in the last line the following: "5 years" and inserting in its place the following:

'one year, except where the killing or wounding of a human being has occurred, in which case the commissioner may revoke the license or licenses for up to 5 years.'

Further amend the bill in section 268 by striking out everything after the amending clause and inserting in its place the following:

'It shall be unlawful for any person to hunt, capture, kill, take, possess, transport, buy or sell any migratory game bird, except at the times, in the manner and numbers and by the means specifically permitted by this section or by rules promulgated by the commissioner. The commissioner may, in conformity with the procedures of the Maine Administrative Procedure Act, Title 5, Part 18, except Title 5, section 8052, subsection 3, promulgate such hunting rules.'

Further amend the bill by striking out all of sections 287, 288, 289, 290, 291 and 292 and inserting in their place the following:

'Sec. 287. 13-A MRSA §1210, sub-§1, 1st ¶, as enacted by PL 1971, c. 439, §1, is repealed and the following enacted in its place: Notwithstanding Title 4, chapter 25, and Title 5, chapter 375, the authority of a foreign corporation to do business in this State may be revoked by the Secretary of State, as provided by subsections 2 and 3, when:

Sec. 288. 13-A MRSA §1302, sub-§1, 2nd sentence, as repealed and replaced by PL 1973, c. 693, §3, is amended to read: Upon failure to file an annual report and to pay the annual report fee or the penalty, the Secretary of State, notwithstanding Title 4, chapter 25, and Title 5, chapter 375, shall revoke a foreign corporation's authority to do business in this State and suspend a domestic corporation from doing business.

Sec. 289. 13-B MRSA §1210, sub-§1, 1st ¶, as enacted by PL 1977, c. 525, §13, is repealed and the following enacted in its place:

1. Secretary of State may revoke authority. Notwithstanding Title 4, chapter 25, and Title 5, chapter 375, the authority of a foreign corporation to carry on activities in this State may be revoked by the Secretary of State, as provided by subsections 2 and 3, when:

Sec. 290. 13-B ^{MRSA} §1302, sub-§1, 2nd sentence, as enacted by PL 1977, c. 525, §13, is amended to read: Upon failure to file a biennial report and to pay the penalty, the Secretary of State, notwithstanding Title 4, chapter 25, and Title 5, chapter 375, shall, after January 1, 1981, revoke a foreign corporation's authority to carry on activities in this State and suspend a domestic corporation from carrying on activities.'

Further amend the bill in section 325 by striking out in the last sentence the following: "formulated by the commissioner"

Further amend the bill by striking out all of sections 333 and 334.

Further amend the bill in section 336 by striking out all of the first underlined sentence and inserting in its place the following:

'This department shall investigate or cause to be investigated all cases or complaints of noncompliance with or violations of this section and the rules and regulations adopted pursuant to this section.'

Further amend the bill by striking out all of section 343 and inserting in its place the following:

'Sec. 343. 22 MRSA §1471-D, sub-§7, ¶D, is enacted to read:

D. This subsection shall not be governed by the provisions of Title 4, chapter 25 or Title 5, chapter 375.'

Further amend the bill in section 405 in the next to the last line (same in L.D.) by inserting after the word "violated" the following: 'any provision of'

Further amend the bill in section 408 by striking out all of the last paragraph and inserting in its place the following:

'Notwithstanding the authority of the Administrative Court to order suspension or revocation, the superintendent has the authority to amend, modify or refuse to renew any insurer's certificate of authority for cause pursuant to procedures in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.'

Further amend the bill by striking out all of section 427 and inserting in its place the following:

'Sec. 427. 24-A MRSA §2858, as amended by PL 1973, c. 585, §12, is further amended by adding at the end the following new paragraph:

All hearings held under this section shall be conducted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.'

Further amend the bill by striking out all of section 452 and inserting in its place the following:

'Sec. 452. 26 MRSA §176, 3rd ¶, first 3 sentences,
as amended by PL 1971, c. 620, §13, are repealed and the following enacted in their place:

The director may file a complaint with the Administrative Court to revoke a certificate of authority pursuant to Title 4, section 1151, for incompetence or untrustworthiness of the holder thereof or for willful falsification of any matter or statement contained in his application or in a report of any inspection.'

Sec. 452-A. 26 MRSA §176, 3rd ¶, 2nd and 3rd sentences, are repealed.'

Further amend the bill by striking out all of sections 456 and 457 —————> and inserting in their place the following:

'Sec. 456. 26 MRSA §244, as last amended by PL 1973, c. 34, §§1, 2 and 3, is repealed and the following enacted in its place:
§244. Inspection required; certificates issued

Each boiler used or proposed for use within this State except boilers exempt under section 142, shall be thoroughly inspected by the chief inspector or one of the deputy inspectors or authorized

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inspectors, as to its design, construction, installation, condition and operation. The Board of Boiler Rules shall promulgate rules pursuant to Title 5, section 8051 et seq., specifying the method and frequency of inspection. Whenever any boiler is inspected as specified by the Board of Boiler Rules and is found to be suitable and to conform to the rules of the Board of Boiler Rules, the chief inspector shall issue to the owner or user of that boiler, upon payment of a fee of \$5 to the bureau, an inspection certificate for each boiler. Inspection certificates shall specify the maximum pressure that the boiler inspected is allowed to carry. The inspection certificate shall be valid for not more than 14 months from its date and shall be posted under glass in the engine or boiler room containing the boiler or an engine operated by it, or, in the case of a portable boiler, in the office of the plant where it is located for the time being.

In accordance with the provisions of Title 5, chapter 375, the chief inspector or any deputy inspector may at any time suspend an inspection certificate when, in his opinion, the boiler for which it was issued may not continue to be operated without menace to the public safety. An authorized inspector shall have corresponding powers with respect to inspection certificates for boilers insured by the company employing him. This suspension shall continue pending decision on the board's application with the Administrative Court for a temporary suspension pursuant to Title 4, section 1153.

Sec. 457. 26 MRSA §246, sub-§2, as amended by PL 1971, c. 51, §6, is repealed and the following enacted in its place:

2. Inspection certificates. To issue, suspend and revoke inspection certificates allowing boilers to be operated, as provided in sections 242 and 244, and as provided in Title 5, chapter 375.'

Further amend the bill by striking out all of sections 462, 463 and 464 and inserting in their place the following:

'Sec. 462. 26 MRSA §481, 2nd sentence, as enacted by PL 1977, c. 543, §4, is repealed and the following enacted in its place:

In the case of an elevator accident, the inspection certificate for the involved elevator shall be summarily revoked in accordance with ----- > Title 5, section 10004, pending decision on any application with the Administrative Court for a further suspension.

Sec. 463. 26 MRSA §490-A, 3rd and 4th ¶¶, as enacted by PL 1977, c. 543, §4, are repealed and the following enacted in their place:

The supervising inspector or state inspector may when in his opinion the conveyance may not continue to be operated without menace to the public safety, temporarily suspend an inspection certificate in accordance with ----- > Title 5, section 10004 and post or direct the posting of a red card of condemnation at every entrance to the conveyance. The condemnation card shall be a warning to the public and shall be of such type and dimensions as the board shall determine. The suspension shall continue pending decision on any application with the Administrative Court for a further suspension.

Sec. 464. 26 MRSA §490-G, sub-§5, as enacted by PL 1977, c. 543, §4, is repealed and the following enacted in its place:

5. Certificates. To issue and temporarily suspend certificates allowing elevators and tramways to be operated pursuant to Title 5, chapter 375.'

Further amend the bill by striking out all of section 479 and inserting in its place the following:

'Sec. 479. 26 MRSA §1194, sub-§7, is amended to read:

7. Witness fees. Witnesses Notwithstanding the provisions of Title 5, section 9060, witnesses subpoenaed pursuant to this chapter shall be allowed fees at a rate fixed by the commission to be paid out of the Employment Security Administration Fund, except that no attendance or mileage fee shall be due or payable when a subpoena is issued to compel an employing unit to appear and produce records and reports for the purpose of making a determination as to liability or for the purpose of completing routine reports as provided under this chapter.'

Further amend the bill in section 494 by striking out all of the last paragraph and inserting in its place the following:

'The Secretary of State shall have the authority, pursuant to chapter 17, to refuse the registration of types of vehicles that he deems should not be permitted to use the highways of the State of Maine, subject to section 2242.'

Further amend the bill by striking out all of sections 522 and 523.

Further amend the bill by inserting after section 560 the following:

'Sec. 560-A. 32 MRSA §578, as repealed and replaced by PL 1975, c. 486, §2, is repealed and the following enacted in its place: §578. Investigation, suspension and revocation of licenses

The Bureau of Consumer Protection may investigate the records and practices of a licensee in accordance with Title 9-A, section 6-106. The superintendent may file a complaint with the Administrative

Court to suspend or revoke a license issued pursuant to this chapter, if, after investigation or hearing or both, the superintendent has reason to believe that the licensee has violated any provisions of this chapter, of any administrative rules issued pursuant to this chapter, or has failed to maintain its financial condition sufficient to qualify for a license on an original application.

Sec. 560-B. 32 MRSA §579, as repealed and replaced by PL 1975 c. 486, §3, is repealed.

Sec. 560-C. 32 MRSA §582, 2nd sentence, as last amended by PL 1977, c. 564, §119, is repealed and the following enacted in its place:

The rules and regulations shall be adopted in the manner prescribed in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II.'

Further amend the bill in section 569 by striking out all of the last paragraph and inserting in its place the following:

'In carrying into effect this chapter, the board may, under the hand of its chairman and the seal of the board, subpoena witnesses and compel their attendance, and may require the production of books, records, papers, documents, etc., ~~in-a-case-involving the-revocation-of-a-certificate-of-registration-as-a-professional engineer-or-a-certificate-as-an-engineer-in-training~~ in investigations to determine whether grounds exist to seek the suspension or revocation of an individual's license or in a case of practicing or offering to practice professional engineering without registration.'

Further amend the bill by inserting after section 681 the following:

'Sec. 681-A. 35 MRSA §1566 is enacted to read:

§1566. Vehicle identification device and permit

The commission is authorized to issue a vehicle identification device and permit for each vehicle as a condition to operation on the highways of this State to holders of certificates issued pursuant to section 1505, interstate permits issued pursuant to section 1502, certificates issued pursuant to section 1552, contract carrier permits issued pursuant to section 1555, interstate permits issued pursuant to section 1556, or special or charter bus service licenses issued pursuant to section 1643. The commission may suspend the vehicle permits for violation of state statutes or commission rules and regulations.

Sec. 681-B. 35 MRSA §1643, 8th sentence is repealed and the following enacted in its place:

The commission shall have the right to file a complaint in the Administrative Court seeking the suspension or revocation of any license issued.'

Further amend the bill in section 682, in that part designated "§151." in the 2nd paragraph, by striking out in the 7th line (5th and 6th in L.D.) the underlined words "appropriate amount of assessment" and inserting in their place the following underline words 'protested assessment or revocation'

Further amend the bill in section 682, in that part designated "§151." in the 3rd paragraph, by striking out in the 2nd line (1st and 2nd in L.D.) the underlined words "final agency action" and inserting in their place the following underlined words 'a decision on reconsideration'

Further amend the bill by inserting after section 715 a new section to read:

'Sec. 715-A. 36 MRSA §3523, as amended by PL 1969, c.437, §5, is repealed and the following enacted in its place:
§3523. Value of property determined; appeal.

The value of the property upon which the tax is computed shall be determined by the State Tax Assessor and certified by him to the persons by whom the tax is payable. Any party interested in the succession or the executor, administrator or trustee may appeal from the decision of the State Tax Assessor in accordance with section 151.'

Further amend the bill in section 717 by striking out the in the 3rd line / (2nd line in L.D) and inserting in its place the following:

'§4305. Certification'

Further amend the bill in section 722, in the first sentence by striking out in both places the underlined words "shall fail" and inserting in their places the following underlined word 'fails'

Further amend the bill in section 731, in the 2nd line from the end, by inserting after the underlined words 'if a protest is filed' the following punctuation ', '

Further amend the bill by inserting after section 741 a new section to read:

'Sec. 741-A. 36 MRSA §6116, as last amended by PL 1973, c.303, §3, is repealed and the following enacted in its place:

§6116. Appeal

A denial in whole or in part of relief claimed under this part may be appealed in accordance with the Administrative Procedure Act, Title 5, chapter 375.'

Further amend the bill in section 768 by striking out the 5th line and inserting in its place the following:

'Personal Services (2) \$ 9,200 (2) \$37,372'

Further amend the bill in section 768 by adding at the end the following:

'The Public Utilities Commission is authorized to hire one employee in addition to the 2 employees authorized above, making a total of 3 additional employees to carry out the purposes of this Act. One additional employee authorized by this section shall be funded from revenues collected pursuant to Title 35, section

1557, subsection 2, first paragraph.

	<u>1977-78</u>	<u>1978-79</u>
ADMINISTRATIVE OFFICE OF		
THE COURT		
Personal Services	---	(1) \$17,293
All Other	\$ 200	15,686
Capital Expenditures	<u>2,500</u>	<u>8,220</u>
Total	\$2,700	\$41,199'

Further amend the bill by renumbering the sections to read consecutively.

Further amend the bill by striking out all of the emergency clause.

Statement of Fact

The purposes of this amendment are to:

1. Delete the emergency preamble;
2. Add a new Section A to make / ^{clear} that the Supreme Judicial Court shall have the power to prescribe rules of procedure for the Administrative Court;
3. Amend sections 4 and 39 and establish new sections 681-A and 681-B to remove from the jurisdiction of the Administrative Court cases involving suspension of vehicle permits issued by the Public Utilities Commission. These permits are suspended by the Commission because of such reasons as failure to file insurance, because of safety violation and failure to designate an agent for service of process. It is estimated that failure to enact this legislation will result in at least 300 to 600 additional cases annually before the Administrative Court;
4. Delete section 5 in order to retain original jurisdiction in the District Court when both Administrative Court Judges disqualify themselves;
5. Clarify in section 11 the Administrative Procedure Act by providing a final appeal to the Maine Supreme Court from license revocation or suspension decisions. The same appeal rights already exist in the Act from decisions made by the agencies;
6. ^{clear} Make / in section 13 that hearings before the State Personnel Board are adjudicatory proceedings under the APA;

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7. Add sections 29-A and 29-B to make / ^{clear} that the Administrative Procedure Act includes the provisions in Title 4 relating to the Administrative Court, and that the definitions in section 8002 apply throughout the Act;

8. Amend sections 30-32 to clarify the ~~definition of the term~~ "rule" and remove the terms "force of law," "sanctions," and "rights of or proceedings available to any person" from the definition, each of which suffers some inherent ambiguity. These concepts are replaced with the concept of judicial enforceability. If an agency promulgates a statement of general applicability, which is intended to be legally binding, it will expect the statement to be capable of enforcement in the courts. If it meets this test, the statement is a "rule" as defined, and the Administrative Procedure Act requirements for rulemaking apply to its promulgation and publication. By contrast, a statement which is intended only to operate as a guideline, a format or a suggestion for the agency or for those persons to whom it applies, and not intended to be legally binding will not be a "rule" as defined, because the agency will not expect that adherence to it will be judicially enforceable;

9. Make / ^{clear} in section 34 that the APA shall not affect rules negotiated or a part of any collective bargaining agreement being negotiated on the effective date of the APA;

10. Add a new section 34-A, which increases the number of persons needed to require a public hearing on rules prepared by an agency;

11. Add a new section 34-B, which makes the Secretary of State aware of impending agency rule changes so that he will be better able to plan for the filing, printing and distribution requirements of the Act;

12. Amend section 35 to provide that rules in effect on July 1, 1978, will become void unless originally adopted in substantial compliance with the APA or pursuant to its provisions;

13. Add a new section 35-A and amend section 40 to incorporate in this bill changes to the APA made in this session by L.D. 2011, as amended, which has been signed by the Governor;

14. Amend section 38 to permit agencies to revoke licenses without hearings in several additional situations, including danger to a significant natural resource, hazards resulting from injured or diseased animals and enumerated problems peculiar to sporting events;

15. Include sections 150 through 150-B, which were omitted from the original bill. They conform procedures of the Athletic Commission to the APA;

16. Amend section 153 to remove the Harness Racing Commission from the license revocation and supervision jurisdiction of the Administrative Court. The commission retains the power to suspend licenses temporarily under section 38 of the bill;

17. Include sections 155-A through 155-C, which conform the Home Repair Financing Act to the APA. This conforming language was inadvertently omitted from the bill;

18. Add sections 155-D to 155-T, which conform the Maine Consumer Credit Code to the APA. ~~This~~ conforming language was inadvertently omitted from the bill;

19. Amend sections 156, 158, 163 and 164 and add sections 163-A and 163-B, which are necessary to correct errors and omissions in the original draft of L.D. 2145 pertaining to the Maine Financial Institutions Act to conform that Act to the APA;

20. Amend section 161, which would require the Superintendent to make his decisions within 60 days after the close of the comment period or hearing. Present banking law requires the superintendent to approve or disapprove any application within 30 days after the close of a public hearing or the written comment;

21. Amend section 225 to exempt the Land Use Regulation Commission from requirements that land use district boundaries and land use standards be approved by the Attorney General, filed with the Secretary of State and supplied to those who wish to subscribe to the agency's rules;

22. Add section 227-A, which establishes an alternate means of notice for new land use district boundaries and land use standards adopted by the Land Use/Regulation Commission. It also requires the notice to be filed with the Secretary of State;

23. Add a new section 227-B which exempts the Land Use Regulation Commission from the rulemaking notice requirements of the APA for decisions affecting land use district boundaries within the land of the person petitioning for the change, provided that all abutting land owners are notified;

24. Add a new section 235-A, which enables the Land Use Regulation Commission to combine a license revocation or suspension action with enforcement proceedings in the Superior Court;

25. Amend section 236 to make / ^{clear} that decisions of the Land Use Regulation Commission, including decisions concerning land use district boundaries, may be appealed only in the manner provided for appeals from adjudicatory decisions;

26. Amend sections 241-243 to enable the Director of the Bureau of Forestry to revoke fire permits, guide permits and burning permits on an emergency basis without going to the Administrative Court when there is a serious forest fire hazard;

27. Amend section 267 to make / ^{clear} that only crimes involving the killing or wounding of a human being may result in a license suspension of up to 5 years;

28. Amend section 268 to delete the 10-day comment period after a hearing from rulemaking for migratory game birds;

29. Delete sections 287 through 292 and replace them with new sections 287 through 290.
/These new sections enable the Secretary of State to revoke or suspend the authority of foreign and domestic corporations to do business in Maine, for grounds stated in the statutes, without an

action in the Administrative Court;

30. Amend section 325 to remove an inconsistency from the bill. The rules involved are promulgated by the State Board of Education, not the commissioner;

30-A. Delete sections 333 and 334 which referred to statutes which are repealed within this session.

31. Amend section 336 to remove the implication that only licensed soil evaluators may file a formal complaint or may be investigated for violation of the rules of the Division of Health Engineering, Department of Human Services;

32. Amend section 343 to enable the Board of Pesticides Control to suspend any license within its jurisdiction for up to 45 days to investigate suspected grounds for revocation;

33. Amend sections 405 and 408 to clarify references to the APA in the Maine Insurance Code;

33-A. Amend sections 427 and 452 to correct statutory references.

These amendments

34. Amend sections 456, 457, 462, 463 and 464, in conjunction with the authority granted by section 38 of this bill, allow the Bureau of Labor to temporarily suspend the operating licenses for boilers, elevators and passenger tramways in event of an accident or otherwise when operation of the equipment would endanger public safety, without having to bring an action in the Administrative Court;

35. Amend section 479 to continue to permit witness fees to be paid by the Employment Security Commission;

35-A. Amend section 494 to correct an error in the bill.

36. Delete sections 522 and 523 from the bill to be consistent with L.D. 2138, which was recently signed by the Governor;

37. Add sections 560-A, 560-B and 560-C which are necessary to eliminate conflicts between provisions of Title 32, chapter 10 "Collection Agencies" and those of the APA;

38. Amend section 569 to restore the power of the board to subpoena witnesses and to compel the production of documents as the board investigates grounds which could lead to the revocation or suspension of an engineer's license;

39. Amend and add sections affecting sections 682, 715-A, 717, 722, 730, 731, 739, 741 and 741-A, pertaining to the tax law. Sections 715-A and 741-A conform to the APA 2 sections of the tax law which were inadvertently omitted from the original bill. The remaining sections change the language of the new appeals provision to clearly establish that submission of information and argument are appropriate for revocation as well as assessment reconsiderations and that a timely petition reconsideration is a prerequisite to judicial review. They also correct typographic and grammatical errors in the original bill;

40. Amend section 757 which changes from 90 to 60 the number of days after receipt of petition within which the Board of Environmental Protection must respond; and

41. Amend the appropriation in section 768 to indicate that for the Public Utilities Commission 2 positions are to be paid out of the General Fund and one position out of other revenues available to the commission, and to provide an appropriation for the Administrative Court.

Reported by the Committee on State Government.

Reproduced and distributed under the direction of the Clerk of the House.
3/14/78

(Filing No. H-1146)