

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

(EMERGENCY)
SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2146

H. P. 2114

House of Representatives, February 16, 1978

The Committee on State Government suggested by Committee on Reference of Bills. Approved for introduction by the Legislative Council pursuant to Joint Rule 24.

EDWIN H. PERT, Clerk

Presented by Mrs. Kany of Waterville.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

AN ACT to Except Certain Procedures from the Maine Administrative Procedure Act.

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

Whereas, the 90-day period may not elapse until after July 1, 1978; and

Whereas, the Maine Administrative Procedure Act is scheduled to become effective on July 1, 1978; and

Whereas, unless certain procedures in existing laws are considered as possible exceptions to that Act, the continued effective implementation of the programs in which these procedures are used may be jeopardized on July 1, 1978; and

Whereas, it is therefore essential that any exceptions to the Maine Administrative Procedure Act become effective at the same time that that Act goes into effect; 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:

Sec. 1. 4 MRSA § 1151, sub-§ 2, as enacted by PL 1977, c. 551, § 1, is amended to read:

2. Licensing jurisdiction. Except as provided in Title 5, section 10004 ~~and~~, Title 29, chapter 17, **and Title 35, sections 1508, 1558 and 1563**, the Administrative Court shall have exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General, to revoke or suspend licenses issued by the agency.

Sec. 2. 5 MRSA § 593, 1st ¶, as amended by PL 1975, c. 766, § 4, is repealed and the following enacted in its place:

Any employee or appointing authority aggrieved by the determination of the Commissioner of Personnel concerning the classification of positions, the allocation of new positions or the reallocation of existing positions in the classified service may appeal from that determination to the State Personnel Board. The appeal shall be made within 30 days after receipt of written notice of that determination from the commissioner. The employee or appointing authority, or his representative, shall be afforded a public hearing before the board. Such a hearing is not an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, but the appellant shall be provided with an opportunity to present facts and arguments in support of or in relation to that appeal at a time and place and in such manner as may be prescribed by the board. The board shall examine and review the appeal and, upon the vote of at least 3 of its members, make such changes in classification, allocation or reallocation as may be just and equitable. Determinations of the board shall be transmitted to the State Budget Officer, the Commissioner of Personnel and the employees and department heads affected thereby.

Sec. 3. 5 MRSA § 631, sub-§ 1, last 2 lines, as enacted by PL 1975, c. 686, § 4, is amended to read:

which rules and regulations shall be in effect and have the force of law upon the approval of the Governor and shall not be subject to the rule-making procedures set forth in the Maine Administrative Procedure Act, Title 5, chapter 375;

Sec. 4. 5 MRSA § 631, sub-§ 5, as enacted by PL 1975, c. 686, § 4, is amended by adding after the first sentence the following new sentence to read:

The minutes of these hearings need not conform to the requirements of the Maine Administrative Procedure Act, Title 5, chapter 375, concerning the records of rule-making or adjudicatory proceedings.

Sec. 5. 5 MRSA § 724, as enacted by PL 1973, c. 500, is amended by adding after the first sentence the following new sentence to read:

Rules and regulations under this section are not rules within the meaning of the Maine Administrative Procedure Act, Title 5, chapter 375.

Sec. 6. 5 MRSA § 8002, sub-§ 9, ¶ B, sub-¶ (5), is enacted to read:

(5) Any procedures or standards related to the planning, design, construction and maintenance of public improvements and public school facilities.

Sec. 7. 5 MRSA § 10051, sub-§ 1, as enacted by PL 1977, c. 551, § 3, is amended to read:

1. **Jurisdiction.** Except as provided in section 10004 and, Title 29, chapter 17, and Title 35, sections 1508, 1558 and 1563, the Administrative Court shall have exclusive jurisdiction upon complaint of an agency to revoke or suspend licenses issued by such agency.

Sec. 8. 8 MRSA § 279-B, 2nd ¶, as amended by PL 1975, c. 623, § 5-C, is further amended to read:

The commission is further authorized to establish a schedule of suspensions of licenses ~~and to levy suspensions, after notice and hearing, for periods not to exceed 20 days~~ for each violation of the rules and regulations. **The commission is authorized to levy suspensions, after notice and hearing, for each violation of the rules and regulations.**

Sec. 9. 8 MRSA § 279-B, last ¶, as repealed and replaced by PL 1975, c. 52, is repealed and the following enacted in its place:

Any person aggrieved by any fine or suspension imposed by the commission may, within 10 days after notice of the commission's decision, seek judicial review in the Superior Court, which decision shall be nonreviewable.

Sec. 10. 9-B MRSA § 255, sub-§ 2, as enacted by PL 1975, c. 500, § 1, is amended to read:

2. **Request for rulemaking.** ~~Notwithstanding the provisions of Title 5, section 8055, only a group as defined in subsection 1 may also~~ petition the superintendent to hold a rule-making proceeding for the purpose of promulgating such rules, regulations, or amendments as may be proposed in their petition and may petition for a hearing as an interested party under sections 251 and 252.

Sec. 11. 9-B MRSA § 255, sub-§ 4, as enacted by PL 1975, c. 500, § 1, is amended by adding at the end the following new sentence to read:

If the request is a petition for rulemaking, 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.

Sec. 11-A. 12 MRSA § 685-A, sub-§ 7, 5th ¶, as amended by PL 1973, c. 569, § 10, is further amended by adding at the end the following new sentence to read:

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.

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

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.

Sec. 13. 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.

Sec. 14. 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, before the Superior Court as part of an enforcement action brought by the commission.

Sec. 15. 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.

Sec. 16. 12 MRSA § 1402, 1st ¶, 3rd sentence, as last amended by PL 1973, c. 460, § 18, is further amended to read:

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. 17. 12 MRSA § 1402, last ¶, last sentence, as amended by PL 1973, c. 460, § 18, is further amended to read:

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. 18. 12 MRSA § 1551, 2nd ¶, 4th sentence, as last amended by PL 1973, c. 460, § 18, is further amended to read:

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.

Sec. 19. 12 MRSA § 2352, 3rd ¶, as amended by PL 1977, c. 503, § 13, repealed and the following enacted in its place:

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.

Sec. 20. 13-A MRSA § 1210, sub-§ 1, 1st sentence, as enacted by PL 1971, c. 439, § 1, is amended to read:

~~The~~ 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. 21. 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. 22. 13-B MRSA § 1210, sub-§ 1, 1st sentence, as enacted by PL 1977, c. 525, § 13, is amended to read:

~~The 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. 23. 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.

Sec. 24. 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.

Sec. 25. 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 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.

Notwithstanding the provisions of Title 4, section 1151 et seq., and Title 5,

section 10051, 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. 26. 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. Notwithstanding the provisions of Title 4, section 1151 et seq., and Title 5, section 10051, to issue, suspend and revoke inspection certificates allowing boilers to be operated, as provided in sections 242 and 244;

Sec. 27. 26 MRSA § 481, 2nd sentence, as enacted by PL 1977, c. 543, § 4, is repealed and the following enacted in its place:

Notwithstanding the provisions of Title 4, section 1151 et seq., and Title 5, section 10051, in the case of an elevator accident, the inspection certificate for the involved elevator shall be summarily revoked pending decision on the board's application with the Administrative Court for a temporary suspension pursuant to Title 4, section 1153.

Sec. 28. 26 MRSA § 490-A, 3rd and 4th ¶¶, as enacted by PL 1977, c. 543, § 4, are repealed and the following enacted in their place:

Notwithstanding the provisions of Title 4, section 1151, et seq., and Title 5, section 10051, 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, suspend an inspection certificate 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 the board's application with the Administrative Court for a temporary suspension pursuant to Title 4, section 1153.

Sec. 29. 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. Notwithstanding the provisions of Title 4, section 1151 et seq., and Title 5, section 10051, to issue, suspend and revoke certificates allowing elevators and tramways to be operated, pursuant to this chapter;

Sec. 30. 32 MRSA § 1356, 1st ¶, is repealed and the following enacted in its place:

Notwithstanding the provisions of the Maine Administrative Procedure Act as set forth in Title 5, section 10051, the board shall retain the power to suspend or revoke the registration of a registered professional engineer or the certificate of an engineer-in-training, who is found to have committed any of the following acts:

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect on July 1, 1978.

STATEMENT OF FACT

This bill contains amendments suggested by various agencies of State Government to authorize their use of certain procedures which are inconsistent with the uniform procedures of the Maine Administrative Procedure Act.

Generally, each section of this bill corresponds with a section of L. D. 2145 (An Act to Conform the State Statutes to the Maine Administrative Procedure Act). The corresponding section is given in parentheses at the end of the paragraph describing the provisions of this bill.

Sections 1 and 7 enable the Public Utilities Commission to continue to revoke and suspend licenses for the transportation of passengers and freight by truck, bus and other vehicles regulated under Title 35. These actions could be taken when commission regulations specifying safety and insurance requirements for these carriers operating in Maine are violated. The Maine Administrative Procedure Act would require these actions to be taken in Administrative Court. (Sections 674 through 678).

Sections 2, 3, 4 and 5 exempt from the requirements of the Maine Administrative Procedure Act the exercise of the authority of the Commissioner and Department of Personnel to promulgate rules and to hold certain kinds of hearings. The authority of the commissioner and department is generally exercised with respect to agencies and employees of the State and not with respect to the public. (Sections 12, 14, 16 and 18).

Section 6 amends the Maine Administrative Procedure Act definition of "rule" to include procedures and standards related to the planning, design, construction and maintenance of public improvements and public school facilities. (No corresponding section; sections 30, 31 and 32 amend the same definition).

Sections 8 and 9 enable the Harness Racing Commission to suspend licenses within its jurisdiction, rather than proceed in the Administrative Court and provide an appeal of their decisions in the Superior Court. (Section 153).

Sections 10 and 11 require a petition from 25 people to the Bureau of Banking before the bureau is required to have a hearing to consider adopting or amending

regulations. (No corresponding sections; section 11 here is identical to section 164).

Section 11-A provides that the Land Use Regulation Commission, in adopting or amending land use districts or standards need not state the basis for its decision, or meet the filing requirements as required for rule-making proceedings by the Maine Administrative Procedure Act. (Section 225). Section 12 provides an alternate method of notifying the public of a new boundary of standard. Section 13 exempts the commission from prior public notice requirements when district boundary changes are sought by a landowner within his own property only.

Section 14 enables the Land Use Regulation Commission to seek revocation or suspension of a commission permit as a part of an enforcement action in the Superior Court, rather than as a separate Administrative Court action. (No corresponding section).

Section 15 provides that appeals from all Land Use Regulation Commission decisions shall be taken as from an adjudicatory decision. This means that judicial review of rules, including district boundaries and standards, will be more limited than provided for in the Act. (Section 236).

Sections 16, 17 and 18 enable the Director of the Bureau of Forestry to declare various fire permits void when forest fire hazards are serious. (Sections 241, 242 and 243).

Section 19 enables the department of Inland Fisheries and Wildlife to adopt hunting rules after hearing without waiting 10 days for further public comment. (Section 268).

Sections 20, 21, 22 and 23 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. (Sections 287, 289, 290 and 292).

Section 24 enables the Board of Pesticides Control to suspend any license within its jurisdiction for up to 45 days to investigate suspected grounds for revocation. (Sections 343).

Sections 25, 26, 27, 28 and 29 would allow the Bureau of Labor to 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. (Sections 456, 457, 462, 463 and 464).

Section 30 reserves to the Board of Registration for Professional Engineers the power to suspend or revoke the registrations of engineers. (Section 570).