

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2134

6
7 S.P. 842

In Senate, March 5, 1986

8 Submitted by the Department of Business, Occupational and Professional
9 Regulation pursuant to Joint Rule 24.

10 Reference to the Committee on Business and Commerce suggested and
ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Clark of Cumberland.

11 Cosponsored by Representative Davis of Monmouth, Representative
Rolde of York and Representative Joseph of Waterville.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Strengthen Professional Regulation.
18

19 Be it enacted by the People of the State of Maine as
20 follows:

21 Sec. 1. 4 MRSA §1151, sub-§2, as amended by PL
22 1983, c. 171, §1, is further amended to read:

23 2. Licensing jurisdiction. Except as provided in
24 Title 5, section 10004; Title 10, section 8003-A; Ti-
25 tle 29, chapter 17; Title 32, chapter 59; and Title
26 35, section 13-A, the Administrative Court shall have
27 exclusive jurisdiction upon complaint of an agency
28 or, if the licensing agency fails or refuses to act
29 within a reasonable time, upon complaint of the At-
30 torney General, to revoke or suspend licenses issued
31 by the agency, and shall have original jurisdiction
32 upon complaint of a licensing agency to determine
33 whether renewal or reissuance of a license of that
34 agency may be refused.

1 Notwithstanding any other provisions of law, no li-
2 censing agency ~~shall~~ may have the authority to rein-
3 state or otherwise affect a license suspended, re-
4 voked or modified by the Administrative Court pursu-
5 ant to a complaint filed by the Attorney General,
6 without the approval of the Attorney General.

7 Sec. 2. 4 MRSA §1151, sub-§2-A, as enacted by PL
8 1983, c. 171, §2, is repealed and the following en-
9 acted in its place:

10 2-A. Appellate jurisdiction. The Administrative
11 Court shall have exclusive jurisdiction to review
12 disciplinary decisions of occupational licensing
13 boards and commissions taken pursuant to Title 10,
14 section 8003-A, subsection 5. The Maine Administra-
15 tive Procedure Act, Title 5, chapter 375, subchapter
16 VII, shall govern this procedure as far as applica-
17 ble, substituting "Administrative Court" for "Superi-
18 or Court."

19 Sec. 3. 5 MRSA §10051, sub-§1, as amended by PL
20 1983, c. 818, §1, is further amended to read:

21 1. Jurisdiction. Except as provided in section
22 10004; Title 10, section 8003-A; Title 29; Title 32,
23 chapter 59, and Title 35, section 13-A, the Adminis-
24 trative Court shall have exclusive jurisdiction upon
25 complaint of any agency or, if the licensing agency
26 fails or refuses to act within a reasonable time,
27 upon complaint of the Attorney General to revoke or
28 suspend licenses issued by the agency and shall have
29 original jurisdiction upon complaint of an agency to
30 determine whether renewal or reissuance of a license
31 of that agency may be refused.

32 Sec. 4. 5 MRSA §10051, sub-§3, as enacted by PL
33 1983, c. 171, §4, is repealed and the following en-
34 acted in its place:

35 3. Appellate jurisdiction. The Administrative
36 Court shall have exclusive jurisdiction to review
37 disciplinary decisions of occupational licensing
38 boards and commissions taken pursuant to Title 10,
39 section 8003-A, subsection 5. The Maine Administra-
40 tive Procedure Act, chapter 375, subchapter VII,
41 shall govern these proceedings as far as applicable,

1 substituting "Administrative Court" for "Superior
2 Court."

3 Sec. 5. 5 MRSA §12004, sub-§1, ¶A, sub-¶(3-A) is
4 enacted to read:

5 (3-A) Board of Licensing \$30/Day 32 MRSA §271
6 of Auctioneers

7 Sec. 6. 5 MRSA §12004, sub-§1, ¶A, sub-¶¶(17),
8 (18) and (32-A) are repealed.

9 Sec. 7. 5 MRSA §12004, sub-§1, ¶A, sub-¶(40), as
10 enacted by PL 1985, c. 295, §14 and c. 496, Pt. A, §1
11 is repealed.

12 Sec. 8. 5 MRSA §12004, sub-§1, ¶A, sub-¶(41) is
13 repealed.

14 Sec. 9. 5 MRSA §12004, sub-§10, ¶A, sub-¶(22-A)
15 is enacted to read:

16 (22-A) Environment Advisory Board of Expenses 32 MRSA
17 Underground Oil Only \$10003
18 Storage Tank
19 Installers

20 Sec. 10. 5 MRSA §12004, sub-§10, ¶A,
21 sub-¶¶(23-A) and (23-B) are enacted to read:

22 (23-A) Environment: Advisory Board for Expenses 12 MRSA
23 Natural Re- the Licensing of Only \$7301
24 sources Guides

25 (23-B) Environment: Junior Maine Expenses 12 MRSA
26 Natural Re- Guides and Trip Only \$7302
27 sources Leaders' Curri-
28 culum Advisory
29 Board

30 Sec. 11. 5 MRSA §12004, sub-§10, ¶A, sub-¶(44-A)
31 is enacted to read:

32 (44-A) Human Ser- Advisory Board for Expenses 22 MRSA
33 vices: Pub- Licensure of Water Only \$2624
34 lic Health Treatment Plant
35 Operators

1 Sec. 12. 5 MRSA §12004, sub-§10, ¶A, sub-¶(66)
2 is repealed.

3 Sec. 13. 5 MRSA §12004, sub-§13, ¶A, sub-¶(3-A)
4 is enacted to read:

5	<u>(3-A) Joint Committee of</u>	<u>See subsection 1,</u>	<u>32 MRSA</u>
6	<u>Licensure-Certifi-</u>	<u>paragraph A, sub-</u>	<u>§3840</u>
7	<u>cation for School</u>	<u>paragraph (33) and</u>	
8	<u>Psychological Ser-</u>	<u>subsection 8, para-</u>	
9	<u>vices</u>	<u>graph A, subpara-</u>	
10		<u>graph (3)</u>	

11 Sec. 14. 5 MRSA §12015, sub-§3 is enacted to
12 read:

13 3. Occupational or professional licensing
14 boards; preauthorization review. Any joint standing
15 committee of the Legislature which considers legisla-
16 tion to establish a board to license or otherwise
17 regulate an occupational profession not previously
18 regulated or to substantially expand the scope of the
19 functions or practices regulated by an existing occu-
20 pational or professional licensing board shall evalu-
21 ate whether the occupation should be regulated or
22 further regulated. Any recommendation to the full
23 Legislature for the establishment or expansion of ju-
24 risdiction of such a board shall include a concise
25 written report addressing:

26 A. The nature of the potential harm to the pub-
27 lic if the occupation or activity is not regu-
28 lated and the extent to which there is a threat
29 to the public health or safety;

30 B. The extent to which existing legal remedies
31 are inadequate to prevent or redress the kinds of
32 harm potentially resulting from nonregulation;

33 C. The extent to which the public is guided in
34 selecting competent practitioners by private cer-
35 tifications, membership in professional or occu-
36 pational associations or academic credentials;

37 D. The extent to which the occupation or profes-
38 sion has made efforts to regulate itself by adop-
39 tion of standards of performance, a code of eth-

1 ics or methods of resolving disputes with consum-
2 ers of their services;

3 E. The nature of the standards proposed for
4 granting a license, as compared with the stan-
5 dards adopted in other jurisdictions, and the au-
6 thority of the proposed regulatory board to amend
7 those standards or establish new standards;

8 F. The qualifications of members of the proposed
9 regulatory board; and

10 G. The extent to which the harms expected to re-
11 sult from continued nonregulation may reasonably
12 be expected to be reduced by the program of regu-
13 lation proposed.

14 Sec. 15. 10 MRSA Pt. 9, first 2 lines are re-
15 pealed and the following enacted in their place:

16 PART 9

17 DEPARTMENT OF PROFESSIONAL AND FINANCIAL

18 REGULATION

19 Sec. 16. 10 MRSA §8001, as repealed and replaced
20 by PL 1985, c. 233, §2; c. 288, §2; and c. 389, §6,
21 is repealed and the following enacted in its place:

22 §8001. Department; organization

23 There is created and established the Department
24 of Professional and Financial Regulation, in this
25 chapter referred to as the "department," to regulate
26 financial institutions, insurance companies, commer-
27 cial sports, grantors of consumer credit and to li-
28 cence and regulate health, service and trade profes-
29 sions and occupations. The department shall be com-
30 posed of the following bureaus:

31 Bureau of Banking;

32 Bureau of Consumer Credit Protection;

33 Bureau of Insurance; and

1 Bureau of Professional Regulation.

2 Sec. 17. 10 MRSA §8002, sub-§5, as repealed and
3 replaced by PL 1975, c. 767, §9, is amended to read:

4 5. Liaison. Act as a liaison between the bu-
5 reaus, boards and commissions within the department
6 and as liaison between them and the Governor.

7 Sec. 18. 10 MRSA §8002, last ¶, as repealed and
8 replaced by PL 1977, c. 564, §49, is amended to read:

9 The commissioner shall not have the authority to
10 exercise or interfere with the exercise of discre-
11 tionary regulatory or licensing authority granted by
12 statute to the bureaus, boards or commissions within
13 the department ~~set forth in section 8001.~~

14 Sec. 19. 10 MRSA §8002, as amended by PL 1983,
15 c. 553, §12, is further amended by adding at the end
16 a new paragraph to read:

17 There is created the Division of Administrative
18 Services, which shall constitute a division within
19 the department to provide assistance to the commis-
20 sioner and to the agencies within the department in
21 personnel matters, budgeting and financial matters
22 and purchasing and clerical and support services and
23 to perform such other duties as the commissioner may
24 designate. The commissioner may employ the Director
25 of Administrative Services and such clerical and
26 technical assistants as are necessary to discharge
27 the duties of the division and shall outline their
28 duties and fix their compensation subject to the Per-
29 sonnel Law.

30 Sec. 20. 10 MRSA §8003, as repealed and replaced
31 by PL 1983, c. 553, §13, is repealed:

32 Sec. 21. 10 MRSA §8003-A is enacted to read:

33 §8003-A. Departmental organization; duties

34 1. Bureau of Professional Regulation. Within
35 the department, there is created the Bureau of Pro-
36 fessional Regulation, which shall include 3 divisions
37 to encompass the state boards and commissions which
38 regulate and license occupations as follows.

- 1 A. The Health Boards Division shall include:
- 2 (1) The Board of Chiropractic Examination
3 and Registration;
- 4 (2) The Board of Dental Examiners;
- 5 (3) The Board of Registration of Dietetic
6 Practice;
- 7 (4) The Board of Registration in Medicine;
- 8 (5) The State Board of Nursing;
- 9 (6) The State Board of Optometry;
- 10 (7) The Board of Osteopathic Examination
11 and Registration;
- 12 (8) The Board of Commissioners of the Pro-
13 fession of Pharmacy;
- 14 (9) The Board of Examiners in Physical
15 Therapy;
- 16 (10) The Board of Examiners of Podiatrists;
- 17 (11) The State Board of Examiners of Psy-
18 chologists;
- 19 (12) The Board of Respiratory Care Practi-
20 tioners;
- 21 (13) The Radiologic Technology Board of Ex-
22 aminers;
- 23 (14) The Board of Examiners on Speech Pa-
24 thology and Audiology;
- 25 (15) The Board of Registration of Substance
26 Abuse Counselors; and
- 27 (16) The State Board of Veterinary Medi-
28 cine.
- 29 B. The Service Boards Division shall include:

- 1 (1) The Board of Licensing of Auctioneers;
- 2 (2) The Board of Accountancy;
- 3 (3) The Maine Athletic Commission;
- 4 (4) The Arborist Examining Board;
- 5 (5) The Maine State Board for Registration
6 of Architects and Landscape Architects;
- 7 (6) The Board of Examiners for the Examina-
8 tion of Applicants for Admission to the Bar;
- 9 (7) The State Board of Barbers;
- 10 (8) The State Board of Cosmetology;
- 11 (9) The Board of Commercial Driver Educa-
12 tion;
- 13 (10) The State Board of Registration for
14 Professional Engineers;
- 15 (11) The State Board of Registration for
16 Professional Foresters;
- 17 (12) The State Board of Funeral Service;
- 18 (13) The State Board of Certification for
19 Geologists and Soil Scientists;
- 20 (14) The Board of Hearing Aid Dealers and
21 Fitters;
- 22 (15) The State Board of Registration for
23 Land Surveyors;
- 24 (16) The Nursing Home Administrators Li-
25 censing Board;
- 26 (17) The Board of Occupational Therapy
27 Practice;
- 28 (18) The Real Estate Commission;
- 29 (19) The State Board of Social Worker Reg-
30 istration; and

1 (20) The Maine State Pilotage Commission.

2 C. The Trades Boards Division shall include:

3 (1) The Board of Boiler Rules;

4 (2) The Electricians' Examining Board;

5 (3) The Board of Elevator and Tramway Safe-
6 ty;

7 (4) The Manufactured Housing Board;

8 (5) The Oil and Solid Fuel Board; and

9 (6) The Plumbers' Examining Board.

10 The commissioner may employ a director for each divi-
11 sion and such clerical and other employees as may be
12 necessary to discharge the duties of the bureau and
13 the divisions. The commissioner shall outline the
14 duties of the department staff serving each division
15 and fix their compensation, subject to the Personnel
16 Law.

17 2. Technical and professional support services.
18 The Bureau of Professional Regulation shall assist
19 the licensing boards and commissions in the perform-
20 ance of their respective functions, including, but
21 not limited to, complaint investigation, license en-
22 forcement and disciplinary actions. For these pur-
23 poses, the bureau shall employ persons qualified to
24 investigate complaints of unlicensed practice or pro-
25 fessional malfeasance or nonfeasance; to serve as
26 presiding officer at administrative hearings; and to
27 manage a computerized system for processing and issu-
28 ing original and renewal licenses as authorized by
29 the appropriate licensing board or commission, and
30 for maintaining a central register containing the
31 name and address of each person or firm licensed by
32 profession, occupation or industry, for operating a
33 uniform complaint tracking system and such other in-
34 formation as the commissioner may direct for adminis-
35 tration, information or planning purposes. In addi-
36 tion, the Attorney General shall assign one Senior
37 Assistant Attorney General and at least 3 Assistant
38 Attorneys General to work full time for the bureau,

1 who shall be paid from funds available to the bureau.
2 The bureau shall retain such clerical and other em-
3 ployees and perform such other services for the li-
4 censing boards and commissions as the commissioner
5 may direct for the efficient and effective regulation
6 of the licensed occupations. The commissioner, with
7 the advice of the respective licensing boards and
8 commissions, may determine the type and form of li-
9 censes issued by all boards and commissions.

10 Staff of the bureau shall investigate each complaint
11 received by the bureau concerning the practice or
12 performance of licensed functions by any person with-
13 in the jurisdiction of any board or commission within
14 the Bureau of Professional Regulation. In addition,
15 bureau staff shall make any investigation requested
16 by any licensing board or commission. The bureau
17 shall have discretion to determine the scope and ex-
18 tent of the investigation, except to the extent addi-
19 tional investigation is directed by a board or com-
20 mission. In aid of its investigative authority, the
21 bureau may issue subpoenas in the name of the rele-
22 vant licensing board or commission, in accordance
23 with the terms of Title 5, section 9060, except that
24 the authority shall extend beyond an adjudicatory
25 proceeding to any stage of an investigation.

26 As to each complaint received or investigation other-
27 wise conducted, the staff shall report the matter to
28 the appropriate board or commission, together with a
29 recommendation of dismissal or for further action.
30 All investigations shall be conducted under the su-
31 pervision of the Senior Assistant Attorney General
32 assigned to the bureau and the files associated with
33 the investigations shall be confidential pursuant to
34 Title 5, section 200-D, but only until such time as
35 the results of the investigation are reported to the
36 licensing board or commission.

37 The licensing board's or commission's disposition of
38 each complaint and investigation shall be made avail-
39 able to the public. With respect to any occupation
40 or profession regulated by a board or commission
41 within the bureau, the bureau may join or subscribe
42 to any national disciplinary record system and to re-
43 port disciplinary actions taken within this State to
44 any such system.

1 3. Fees. Each licensing board or commission
2 within the Bureau of Professional Regulation shall by
3 rule establish application and examination fees in
4 amounts which are reasonable and necessary for their
5 respective purposes. Notwithstanding any other pro-
6 vision of law, original and renewal license fees
7 throughout the bureau shall be as follows annually,
8 as applicable:

9 Entry level: Apprentices, helpers and
10 trainees.....\$10

11 Midlevel: Journeymen.....\$20

12 Master level: Full professional.....\$35

13 Doctoral level or equivalent.....\$50

14 License fees for boards and commissions with more
15 than 10,000 licenses shall be:

16 Entry level.....\$10

17 Midlevel.....\$10

18 Master level.....\$20

19 Doctoral level.....\$35

20 Boards and commission which allow licensees inactive
21 status shall charge annual inactive fees of:

22 Midlevel.....\$15

23 Master level.....\$20

24 Doctoral level.....\$35

25 The annual license fees for businesses, corporations,
26 companies, agencies, offices and shops shall be set
27 as reasonable and necessary for regulating those ac-
28 tivities.

29 The fees for types and categories of licenses not ad-
30 ressed in this subsection shall be established by
31 the respective boards and commissions to be consist-
32 ent with the range of fees set forth in this subsec-

1 tion. This subsection notwithstanding, all license
2 fees of the Maine Athletic Commission shall be estab-
3 lished by that commission.

4 4. Funds. Notwithstanding any other provision
5 of law, there is established a fund for each division
6 within the Bureau of Professional Regulation to be
7 known respectively as the Health Boards Fund, the
8 Services Boards Fund and the Trades Boards Fund,
9 which shall be credited with all license fees and
10 other income collected by each board and commission
11 within each division. Any balance in these funds at
12 the end of each fiscal year shall not lapse, but
13 shall be carried forward as a continuing account to
14 be expended for the same purposes in the following
15 fiscal years.

16 5. License defined. For purposes of this sec-
17 tion, the term "license" is used to mean a license,
18 certification, registration, permit, approval or oth-
19 er similar document evidencing admission to or grant-
20 ing authority to engage in a profession, occupation,
21 business or industry.

22 6. Licensing periods; renewal dates. In order
23 that licenses may be processed and issued in a rea-
24 sonably uniform manner over a fiscal year, the
25 commissioner may establish expiration or renewal dates
26 for all licenses authorized to be issued by bureaus,
27 boards and commissions within the department, not-
28 withstanding any other provisions of law. If an ex-
29 piration or renewal date established by the commis-
30 sioner has the effect of shortening the term of a li-
31 cence currently in effect, the bureau, board or com-
32 mission, or the department in the case of a license
33 which it issues directly, shall credit the fee paid,
34 on a prorated basis, for the unexpired term of the
35 current license toward the renewal fee of the renew-
36 al license. If a license is not renewed on the new
37 expiration or renewal date established by the commis-
38 sioner, the license shall remain in effect through
39 its original term, unless suspended or revoked sooner
40 under laws or rules of the respective bureau, board
41 or commission. If a licensee seeks to renew his li-
42 cence at the end of the original term, the law or
43 rules established by the respective bureau, board or
44 commission for late renewals or reregistrations shall

1 apply. For the purpose of implementing and adminis-
2 tering biennial licensing, the commissioner may per-
3 mit bureaus, boards and commissions within the de-
4 partment to issue licenses and establish renewal fees
5 for less than a 2-year term. Nothing in this section
6 may change the term or fee for one-time licenses, ex-
7 cept as specifically provided for.

8 Notwithstanding any other provision of law, no origi-
9 nal license applied for on and after July 1, 1986,
10 may be issued for a term longer than one year. Any
11 license issued prior to July 1, 1986, and in effect
12 on that date, or first applied for prior to that date
13 and subsequently issued, shall not be renewed for a
14 term of longer than one year, notwithstanding any
15 other provision of law.

16 7. Authority of bureaus, boards or commissions.
17 Nothing in this section may be construed to diminish
18 or deprive any bureau, board or commission within the
19 department of its statutory duty and sole authority
20 to regulate its profession, occupation or industry.

21 Except as expressly precluded by language of denial
22 in its own governing law and in addition to authority
23 otherwise conferred, each licensing board and commis-
24 sion may:

25 A. Suspend a violator's license for up to 90
26 days or impose a civil penalty of up to \$500 for
27 any violation of the applicable laws, rules or
28 license terms by a licensee under its jurisdic-
29 tion; or

30 B. Execute a consent agreement, with the consent
31 of all parties and the counsel to the licensing
32 board or commission, to resolve any complaint or
33 investigation without further proceedings. Any
34 remedy that is otherwise available by law may be
35 achieved by consent agreement, including tempo-
36 rary or permanent surrender of an occupational
37 license. A consent agreement is not subject to
38 review or appeal. A consent agreement is en-
39 forceable by an action in Superior Court.

40 The jurisdiction to suspend occupational licenses
41 conferred by this subsection shall be concurrent with

1 that of the Administrative Court. Civil penalties
2 shall be paid to the Treasurer of State.

3 Any nonconsensual disciplinary action taken under au-
4 thority of this subsection may be imposed only after
5 a hearing conforming to the requirements of Title 5,
6 chapter 375, subchapter IV, and shall be subject to
7 judicial review exclusively in the Administrative
8 Court in accordance with Title 5, chapter 375, sub-
9 chapter VII, substituting the term "Administrative
10 Court" for "Superior Court," notwithstanding any other
11 provision of law.

12 8. Funding. The commissioner may assess each
13 bureau, board or commission served by the Division of
14 Administrative Services its reasonable share of an
15 amount sufficient to cover the cost of operating the
16 division. Within the Bureau of Professional Regula-
17 tion, the commissioner may assess each division its
18 reasonable share of an amount sufficient to cover the
19 cost of services available in common to the divisions
20 from the bureau.

21 Sec. 22. 12 MRSA §7301, sub-§1, as amended by PL
22 1983, c. 812, §89, is further amended to read:

23 1. Examining board. A The Advisory Board of
24 Examiners for the Licensing of Guides, established by
25 Title 5, section 12004, subsection ± 10, shall con-
26 sist of the following:

27 A. ~~The commissioner or such~~ One subordinate of-
28 ficer of the department as designated by the com-
29 missioner may designate;

30 B. Two wardens of the department; and

31 C. A representative of the public to be ap-
32 pointed by the Governor for a term of 3 years.
33 The public member shall be compensated as pro-
34 vided in Title 5, chapter 379.

35 Sec. 23. 12 MRSA §7301, sub-§1-A, as amended by
36 PL 1983, c. 797, §9, is further amended to read:

37 1-A. Rules. The commissioner, with the advice
38 and consent of the advisory board of examiners, shall

1 make such rules pertaining to the licensing of guides
2 as he deems necessary, including safety standards to
3 provide the clients of guides reasonable protection
4 from hazards.

5 Sec. 24. 12 MRSA §7301, sub-§3, as repealed and
6 replaced by PL 1983, c. 100, §2, is amended to read:

7 3. Application. Any person wishing to be li-
8 censed as a Maine guide shall submit an application
9 on such forms as the commissioner may provide.

10 In addition to other relevant information, the com-
11 missioner may require statements that the applicant
12 is competent; has no habitual intemperence in the use
13 of alcohol, habitual use of narcotic, hypnotic or
14 other drugs listed as controlled substances by the
15 Drug Enforcement Administration; and has not received
16 and retained a fee from a party and then failed to
17 meet that party as agreed or failed to provide the
18 services agreed to.

19 The commissioner may adopt rules to establish stan-
20 dards of competency which shall be provided to each
21 applicant and other rules necessary to administer
22 this subsection.

23 Failure or refusal to satisfactorily answer any ques-
24 tion in the application shall be a basis for denying
25 the application.

26 The ~~board commissioner~~ shall act on all applications
27 within 5 working days of receipt, and shall notify
28 all applicants at least 2 weeks prior to the examina-
29 tion.

30 Sec. 25. 12 MRSA §7301, sub-§4, as amended by PL
31 1983, c. 100, §3, is further amended to read:

32 4. Examinations. All persons who have not held a
33 guide's license prior to January 1, 1980, shall be
34 required to pass an examination as directed by the
35 ~~board of examiners~~ commissioner. Examinations shall
36 be held in areas designated by the commissioner.

37 In addition, the commissioner may require any li-
38 censed guide to be examined or reexamined if the com-

1 commissioner receives written complaint and upon inves-
2 tigation believes that the statements made by the ap-
3 plicant on his application are no longer true.

4 Sec. 26. 12 MRSA §7302, as amended by PL 1985,
5 c. 304, §15, is further amended to read:

6 §7302. Junior Maine guides and trip leaders; curric-
7 ulum advisory board

8 1. Advisory board. The commissioner, as autho-
9 rized by Title 5, section 12004, subsection 10, shall
10 appoint a board of 5 members, to be known as the
11 "Junior Maine Guides and Trip Leaders' Curriculum
12 Advisory Board." The board shall consist of one mem-
13 ber from the Department of Inland Fisheries and Wild-
14 life, one member from the Department of Human Ser-
15 vices and 3 public members, one of whom shall be a
16 Maine camp director. The public members shall be com-
17 pensated as provided in Title 5, chapter 379. Ap-
18 pointments to the board shall be for 3 years or until
19 successors are appointed.

20 2. Requirements. The board shall hold such meet-
21 ings as may be necessary and shall advise the commis-
22 sioner on adoption of rules for the administration of
23 this section and section 7303. ~~The~~ With the advice of
24 the board, the commissioner shall establish standards
25 of requirements and methods of ascertaining fitness
26 of candidates for a junior Maine guide certificate.
27 ~~The board and~~ shall also adopt, approve and review
28 trip leaders' safety course curriculum which shall
29 include, but not be limited to, training in first aid
30 and water safety, including lifesaving techniques, as
31 appropriate, and trip leaders' qualifications under
32 the special application procedure in section 7303.

33 3. Eligibility for junior guides. To qualify as
34 a junior guide, a person shall be 14 years of age or
35 older and under 18 years of age and shall pass the
36 required examinations. A junior guide permit shall be
37 presented by the commissioner to those who qualify.

38 4. Restrictions.

39 A. No junior guide ~~shall~~ may receive remunera-
40 tion for services; and

1 B. No junior guide ~~shall~~ may compete in any way
2 with regular Maine guides.

3 Sec. 27. 22 MRSA §2621, as amended by PL 1983,
4 c. 819, Pt. A, §55, is further amended to read:

5 §2621. Definitions

6 As used in this subchapter, unless the context
7 otherwise indicates, the following words have the
8 following meanings.

9 1. Board. "Board" means the Advisory Board for
10 Licensure of Water Treatment Plant Operators referred
11 to in this subchapter.

12 2. License. "License" means a license issued by
13 the board commissioners stating that the applicant
14 has met the requirements for the specified operator
15 classification.

16 Sec. 28. 22 MRSA §2624, as amended by PL 1985,
17 c. 295, §§35 and 36, is further amended to read:

18 §2624. Advisory Board of Licensure

19 The Governor shall appoint a an Advisory Board of
20 for Licensure of Water Treatment Plant Operators, as
21 authorized by Title 5, chapter 379, which shall be
22 composed of 6 persons as follows: Two operators who
23 shall be licensed under this chapter, with one of
24 these holding a license of the highest classification
25 issued by the board; one person who shall be from the
26 Department of Human Services, as the commissioner may
27 recommend; one person who shall be a water utility
28 management representative; one person who shall be an
29 educator whose field of interest is related to water
30 supply; and one member of the general public.

31 Each member of the board, with the exception of
32 the ex officio member from the Department of Human
33 Services, shall be appointed for a 3-year term. Va-
34 cancies shall be filled by appointment of the Gover-
35 nor for unexpired terms.

36 Members of the board, shall elect from their num-
37 ber a chairman at the first meeting of each year. ~~On~~

1 all matters before the board, the chairman may vote
2 only in case of a tie among the other members present
3 and voting. Thereafter, annually, a chairman shall
4 be elected. The Department of Human Services repre-
5 sentative of the board shall serve as secretary of
6 the board and be responsible for maintaining records
7 and providing administrative support.

8 The board shall design and the commissioner shall
9 hold at least one examination each year at a time and
10 place designated by ~~them~~ for the purpose of examining
11 candidates for licensure. ~~Additional meetings~~ Meet-
12 ings of the board may be called by the chairman, or
13 by him at the request of any other 2 members, as may
14 be necessary to carry out this chapter.

15 Members of the board shall be compensated accord-
16 ing to Title 5, chapter 379.

17 The commissioner, with the advice of the board,
18 shall license persons to supervise the operation of a
19 public water system or of a part of a system.

20 The board commissioner, with the advice of the
21 ~~commissioner~~ board, shall establish by regulation the
22 qualifications, conditions and licensing standards
23 and procedures for the licensure of individuals to
24 act as operators.

25 Sec. 29. 22 MRSA §2625, as amended by PL 1983,
26 c. 819, Pt. A, §55, is further amended to read:

27 §2625. Licenses

28 The board commissioner shall issue biennial li-
29 censes to individuals to act as operators. The li-
30 cense shall indicate the classification level of the
31 systems or parts of systems for the operation of
32 which the individual is qualified to act as an opera-
33 tor.

34 The board commissioner may file a complaint with
35 the Administrative Court to revoke a license of an
36 operator when ~~the board~~ he determines that the opera-
37 tor has practiced fraud or deception; that he has
38 been negligent in that reasonable care, judgment or
39 the application of his knowledge or ability was not

1 used in the performance of his duties; or that the
2 operator is incompetent or unable to perform his du-
3 ties properly.

4 The licenses of operators who terminate their em-
5 ployment at a public water system shall remain renew-
6 able for 3 years. After 3 years, the licenses shall
7 be automatically invalidated. Operators whose li-
8 censes are invalidated under this section may be is-
9 sued new licenses of a like classification provided
10 appropriate proof of competency is presented to the
11 board commissioner.

12 This chapter shall not be construed to effect or
13 prevent the practices of any other legally recognized
14 profession.

15 When the unexpired term of license of an appli-
16 cant is or will be more than one year at the time of
17 licensure, the board commissioner may require the ap-
18 plicant to pay an additional fee not to exceed 1/2
19 the biennial license fee.

20 Applications for a first examination shall be re-
21 ceived by the board chairman at least 5 days prior to
22 a scheduled meeting of the board the examination.
23 The passing grade on any portion of the examination
24 shall be not less than 70%. A candidate failing one
25 examination may apply for reexamination, which may be
26 granted upon payment of a fee established by the
27 board regulation. Any candidate for registration
28 having an average grade of less than 50% may not ap-
29 ply for reexamination for 6 months.

30 Sec. 30. 22 MRSA §2625-A, as enacted by PL 1983,
31 c. 819, Pt. A, §55, is amended to read:

32 §2625-A. Renewals

33 All licenses shall expire on December 31st of
34 each biennial period and may be renewed thereafter
35 for 2-year periods without further examination, upon
36 the payment of the proper renewal fee as set forth in
37 the board's rules. Any person who fails to renew his
38 license within the 6-month grace period following the
39 expiration date shall be required to take an examina-
40 tion.

1 The board commissioner shall notify everyone reg-
2 istered under this subchapter of the date of expira-
3 tion of his license and the fee required for its re-
4 newal for a 2-year period. The notice shall be
5 mailed to the person's last-known address at least 30
6 days in advance of the expiration date of his li-
7 cense.

8 Sec. 31. 22 MRSA §§2626, 2628 and 2629, as
9 amended by PL 1983, c. 819, Pt. A, §55, are further
10 amended to read:

11 §2626. License from outside of Maine

12 The board commissioner, upon application there-
13 for, may issue a license without examination, in a
14 comparable classification, to any person who holds a
15 license in any state, territory or possession of the
16 United States or any country, providing the require-
17 ments for licensure of operators under which the
18 person's license was issued does not conflict with
19 this chapter and in the opinion of the commissioner,
20 with the advice of the board, are of a standard not
21 lower than that specified by regulations adopted un-
22 der this chapter.

23 §2628. Rules

24 The board commissioner, with the advice of the
25 ~~commissioner~~ board, in accordance with any other ap-
26 propriate state laws, shall make such rules as are
27 reasonably necessary to carry out the intent of this
28 subchapter. The rules shall include, but are not lim-
29 ited to, provisions establishing requirements for li-
30 censure and procedures for examination of candidates
31 and such other provisions as are necessary for the
32 administration of this subchapter.

33 §2629. Fees

34 The application fees, biennial renewal fees and
35 reinstatement fees shall be established by the board
36 commissioner by rule and shall be based upon differ-
37 ent classifications of water treatment systems and
38 the levels of competence to operate various water
39 systems. The application fee shall not exceed \$35,
40 and the biennial renewal fee shall not exceed \$30.

1 The revenues derived from the fees shall be deposited
2 by the board in a special account to be used to de-
3 fray the expenses incurred by the board. Revenues de-
4 rived from applicants failing the examination shall
5 be retained by the board.

6 Sec. 32. 32 MRSA §271, as amended by PL 1985, c.
7 389, §9, is repealed and the following enacted in its
8 place:

9 §271. Board of Licensing of Auctioneers

10 The Board of Licensing of Auctioneers, as estab-
11 lished by Title 5, section 12004, subsection 1, shall
12 be composed of 3 members, 2 of whom shall be auction-
13 eers and one of whom shall be a public member. Mem-
14 bers shall be compensated according to Title 5, chap-
15 ter 379.

16 Appointments shall be made by the Governor for
17 3-year terms, with no person being eligible to serve
18 more than 3 full consecutive terms, provided that for
19 this purpose only a period actually served which ex-
20 ceeds 1/2 of the 3-year term shall be deemed a full
21 term. Upon expiration of a member's term, he shall
22 serve until his successor is qualified and appointed.
23 The successor's term shall be 3 years from the date
24 of the expiration, regardless of the date of his ap-
25 pointment. Any vacancy shall be filled by appoint-
26 ment for the unexpired term. A board member may be
27 removed by the Governor for cause.

28 The board shall meet at least once a year and at
29 such other times as the board deems necessary.

30 The board may, in accordance with the procedures
31 established by the Maine Administrative Procedure
32 Act, Title 5, chapter 375, subchapter II, adopt such
33 rules as may be reasonably necessary for the proper
34 administration of this chapter.

35 Sec. 33. 32 MRSA §271-A, as enacted by PL 1983,
36 c. 824, Pt. S, is amended to read:

37 §271-A. Disposition of fees

1 All fees received by the ~~commissioner~~ under this
2 chapter shall be paid to the Treasurer of State ~~to be~~
3 ~~used for carrying out Title 10, chapter 901 for de-~~
4 ~~posit in the Services Boards Fund.~~ Any balance of
5 these fees shall not lapse, but shall be carried for-
6 ward as a continuing account to be expended ~~for the~~
7 ~~same purpose~~ in the following fiscal years.

8 Sec. 34. 32 MRSA §273, as amended by PL 1983, c.
9 413, §15, is further amended to read:

10 §273. Resident application; fee

11 Every resident person in this State desiring to
12 do business as an auctioneer, who satisfies the ~~Com-~~
13 ~~missioner of Business Regulation, hereinafter re-~~
14 ~~ferred to as the commissioner, or an agent designated~~
15 ~~by him, board~~ that he has knowledge of the laws of
16 this State pertaining to auctions and sales, the eth-
17 ics and practices of auctioneers, the laws relating
18 to the record of sales of used merchandise and such
19 other related subjects as the ~~commissioner~~ board may
20 select, upon application in form designated by the
21 ~~commissioner~~ board, shall receive a license to con-
22 duct auctions. The original application shall be ac-
23 companied by 2 letters of recommendation as evidence
24 of ethical business practice.

25 The ~~commissioner~~ board may establish an applica-
26 tion fee and an examination fee in amounts which are
27 reasonable and necessary for their respective pur-
28 poses.

29 The applicant shall furnish evidence of a surety
30 bond payable to the Treasurer of State in the amount
31 of \$10,000 issued by a surety company approved by the
32 Bureau of Insurance and licensed to do business in
33 the State of Maine.

34 The application and supporting information shall
35 be kept on file together with a record of all li-
36 censes issued. The license fee shall be \$50 for a bi-
37 ennium and the original license shall be effective
38 from date of issue until March 31st of the biennial
39 expiration or at any date which the ~~commissioner~~
40 board designates. Original licenses effective for
41 less than one year for the biennial licensing period
42 shall be \$25.

1 Sec. 35. 32 MRSA §276, as amended by PL 1983, c.
2 413, §17, is further amended to read:

3 §276. Nonresident licensure

4 Every nonresident person desiring to do business
5 as an auctioneer in this State shall obtain an auc-
6 tioneer's license. The ~~e~~ommissioner board may issue a
7 license to any nonresident upon fulfillment of the
8 same application requirements as those set forth for
9 resident auctioneers.

10 In addition, an applicant licensed to conduct
11 auctions in the state in which he resides shall fur-
12 nish proof of that licensure to the ~~e~~ommissioner
13 board.

14 Sec. 36. 32 MRSA §278-A, as enacted by PL 1983,
15 c. 413, §19, is amended to read:

16 §278-A. Investigations; hearings; license suspension
17 or revocation

18 1. Investigations. The commissioner shall in-
19 vestigate, or cause to be investigated, all com-
20 plaints made to him and all cases of noncompliance
21 with or violation of this chapter.

22 2. Hearings. Hearings may be conducted ~~by the~~
23 ~~e~~ommissioner before the board to assist with inves-
24 tinations, to determine whether grounds exist for
25 suspension, revocation or denial of a license, or as
26 otherwise deemed necessary ~~by the e~~ommissioner to the
27 fulfillment of ~~his responsibilities under~~ this chap-
28 ter.

29 The ~~e~~ommissioner board shall not refuse to renew a
30 license for any reason other than failure to pay a
31 required fee unless he has ~~afforded~~ the licensee has
32 been afforded an opportunity for an adjudicatory
33 hearing. The ~~e~~ommissioner board shall hold an adju-
34 dicatory hearing at the written request of any person
35 who is denied a license without a hearing for any
36 reason other than failure to pay a required fee,
37 provided that the request for hearing is received
38 within 30 days of the applicant's receipt of written
39 notice of the denial of his application, the reasons

1 therefor and his right to request a hearing. Hear-
2 ings shall be conducted in conformity with the Maine
3 Administrative Procedure Act, Title 5, chapter 375,
4 subchapter IV, to the extent applicable. The
5 ~~commissioner~~ board may subpoena witnesses, records
6 and documents in any hearing ~~he~~ it conducts.

7 3. Refusal to issue or renew; suspension or rev-
8 ocation. The ~~commissioner~~ board may suspend or re-
9 voke a license pursuant to Title 5, section 10004.
10 In addition, the ~~commissioner~~ board may refuse to
11 issue or renew a license or the Administrative Court
12 may revoke, suspend or refuse to renew a license for
13 any of the following reasons:

14 A. Conviction of the licensee of a violation of
15 the Maine Criminal Code, Title 17-A, chapter 15,
16 19 or 37 or of a Class A, Class B or Class C
17 crime thereunder or of a felony under federal
18 law, subject to the limitations of Title 5, chap-
19 ter 341;

20 B. Failure to comply with or properly maintain
21 records required by Title 15, section 456;

22 C. Failure, within reasonable time, to account
23 for or remit any moneys coming into his posses-
24 sion which belong to others; or

25 D. Any act in violation of this chapter.

26 Sec. 37. 32 MRSA §4056, sub-§2, ¶F, as enacted
27 by PL 1983, c. 171, §9, is amended to read:

28 F. If the commission, after a hearing, finds
29 that a violation of this chapter has occurred, it
30 shall:

31 (1) Report its findings and recommendations
32 to the Attorney General or district attorney
33 for prosecution;

34 (2) If it finds that there are mitigating
35 circumstances, reprimand the person;

36 (3) Assess the violator a ~~fine of no more~~
37 ~~than \$500 for each violation~~ civil penalty

1 pursuant to Title 10, section 8003-A, sub-
2 section 7;

3 (4) Except for violations under subsection
4 5, suspend the violator's license ~~for up to~~
5 60 days pursuant to Title 10, section
6 8003-A, subsection 7; or

7 (5) Require the person to comply with such
8 terms and conditions as it determines are
9 necessary to correct or prevent the basis of
10 the violation.

11 Sec. 38. 32 MRSA §10002, sub-§1, as enacted by
12 PL 1985, c. 496, Pt. A, §2, is amended to read:

13 1. Advisory board. "~~Board~~" "Advisory board"
14 means the Advisory Board of Underground Oil Storage
15 Tank Installers established under this chapter.

16 Sec. 39. 32 MRSA §10002, sub-§1-A is enacted to
17 read:

18 1-A. Board. "Board" means the Board of Environ-
19 mental Protection.

20 Sec. 40. 32 MRSA §10002, sub-§5, as enacted by
21 PL 1985, c. 496, Pt. A, §2, is amended to read:

22 5. Public member. "Public member" means that
23 that person may not be a past or present member of
24 the occupation or profession ~~regulated by the board~~
25 offering underground oil storage tank installation
26 services, may not have been professionally affiliated
27 with that occupation or profession for a period of 5
28 years preceding appointment to the advisory board and
29 may not have had in the past a material or financial
30 interest in either the provision of services provided
31 by this occupation or profession or an activity di-
32 rectly related to this occupation or profession, in-
33 cluding the representation of the advisory board or
34 profession for a fee at any time during the 5 years
35 preceding appointment.

36 Sec. 41. 32 MRSA §10003, as enacted by PL 1985,
37 c. 496, Pt. A, §2, is amended to read:

1 §10003. Advisory board of underground oil storage
2 tank installers; establishment; compensation

3 1. Establishment and membership. There is es-
4 tablished within the Department of Environmental Pro-
5 tection, a an Advisory Board of Underground Oil Stor-
6 age Tank Installers. The advisory board shall con-
7 sist of 7 members appointed by the Governor as fol-
8 lows: One from the Department of Environmental Pro-
9 tection; one from either the Maine Oil Dealer's Asso-
10 ciation, the Pine Tree Gas Retailers Association or
11 the Maine Petroleum Association; one underground oil
12 storage tank installer; one from either the Oil and
13 Solid Fuel Board, the Plumber's Examining Board or
14 the State Board of Certification for Geologists and
15 Soil Scientists; one from the Board of Environmental
16 Protection; and 2 public members.

17 2. Terms of appointment. The Governor, within
18 60 days following the effective date of this chapter,
19 shall appoint 3 advisory board members for a term of
20 one year, 3 for a term of 2 years and one for a term
21 of 3 years. Appointments made thereafter shall be
22 for 3-year terms, but no person may be appointed to
23 serve more than 2 consecutive terms at any one time.
24 Terms shall begin on the first day of the calendar
25 year and end on the last day of the calendar year or
26 until successors are appointed, except for the first
27 appointed members who shall serve through the last
28 calendar days of the year in which they are ap-
29 pointed, before commencing the terms prescribed by
30 this section.

31 Any member of the advisory board may be removed from
32 office for cause by the Governor. A member may not
33 serve more than 2 full ~~suecessive~~ consecutive terms
34 at any one time provided that, for this purpose only,
35 a period actually served which exceeds 1/2 of the
36 3-year term shall be deemed a full term. A member ap-
37 pointed as a representative of an agency or group
38 listed in subsection 1 may continue to serve as a
39 member of the advisory board after the qualifying af-
40 iliation is lost or severed, but only for the re-
41 mainder of that term.

42 3. Meetings. The advisory board shall meet dur-
43 ing the first month of each calendar year to select a

1 chairman and for other purposes. At least one addi-
2 tional meeting shall be held before the end of each
3 calendar year. Other meetings may be convened at the
4 call of the chairman or the written request of any 2
5 advisory board members. A majority of the members of
6 the advisory board shall constitute a quorum for all
7 purposes.

8 4. Compensation. Members of the advisory board
9 shall receive no compensation for their services, but
10 are entitled to expenses on the same basis as pro-
11 vided for state employees.

12 Sec. 42. 32 MRSA §10004, as enacted by PL 1985,
13 c. 496, Pt. A, §2, is amended to read:

14 §10004. Board of Environmental Protection and Advis-
15 ory Board of Underground Oil Storage Tank
16 Installers; powers and duties

17 1. Powers. The ~~board~~ Board of Environmental
18 Protection shall administer and enforce this chapter
19 and evaluate the qualifications of applicants for
20 certification. The board may issue subpoenas, exam-
21 ine witnesses, administer oaths and may investigate
22 or cause to be investigated any complaints made to it
23 or any cases of noncompliance with or violation of
24 this chapter.

25 2. Rules. ~~The~~ With the advice of the advisory
26 board, the board may adopt, in accordance with the
27 Maine Administrative Procedure Act, Title 5, chapter
28 375, rules relating to professional conduct to carry
29 out the policy of this chapter, including, but not
30 limited to, rules relating to professional regulation
31 and to the establishment of ethical standards of
32 practice for persons certified to practice under-
33 ground oil storage tank installation.

34 3. Hearings. Hearings may be conducted by the
35 board to assist with investigations, to determine
36 whether grounds exist for suspension, revocation or
37 denial of certification, or as otherwise deemed nec-
38 essary to the fulfillment of its responsibilities un-
39 der this chapter. Hearings shall be conducted in
40 accordance with the Maine Administrative Procedure
41 Act, Title 5, chapter 375, subchapter IV, to the ex-
42 tent applicable.

1 4. Records. The board shall keep such records
2 and minutes as are necessary to the ordinary dispatch
3 of its functions.

4 5. Contracts. The board may enter into con-
5 tracts to carry out its responsibilities under this
6 chapter.

7 6. Reports. ~~No later than August 1st of each~~
8 ~~year, the board shall submit to the commissioner, for~~
9 ~~the preceding fiscal year ending June 30th, its annu-~~
10 ~~al report of its operations and financial position,~~
11 ~~together with such comments and recommendations as~~
12 ~~the commissioner deems essential. The advisory board~~
13 ~~is authorized and encouraged to submit to the board~~
14 ~~at any time a report containing its comments and rec-~~
15 ~~ommendations concerning implementation of this chap-~~
16 ~~ter. Whenever the advisory board recommends the adop-~~
17 ~~tion, modification or repeal of a rule, the board~~
18 ~~shall initiate appropriate rule-making proceedings to~~
19 ~~consider the recommendation, unless the board has~~
20 ~~conducted the proceedings involving substantially the~~
21 ~~same recommendation within the preceding 2 years.~~

22 Sec. 43. 32 MRSA §10005, as enacted by PL 1985,
23 c. 496, Pt. A, §2, is repealed and the following en-
24 acted in its place:

25 §10005. Administrative provisions

26 With the advice of the board, the commissioner
27 may appoint, subject to the Personnel Law, such em-
28 ployees as may be necessary to carry out this chap-
29 ter. Any person so employed shall be located in the
30 department and under the administrative and supervi-
31 sory direction of the commissioner.

32 Sec. 44. 32 MRSA §10007, as enacted by PL 1985,
33 c. 496, Pt. A, §2, is repealed and the following en-
34 acted in its place:

35 §10007. Persons and practices exempt

36 Nothing in this chapter may be construed as pre-
37 venting or restricting the practice, services or ac-
38 tivities of any person certified in this State by any
39 other law from engaging in the profession or occupa-
40 tion for which he is certified.

1 Sec. 45. 32 MRSA §10009, sub-§1, as enacted by
2 PL 1985, c. 496, Pt. A, §2, is amended to read:

3 1. Certification requirements for persons now
4 working as underground oil storage tank installers.
5 A certificate may be granted to those persons who
6 have been employed as underground oil storage tank
7 installers for at least 2 years preceding ~~creation of~~
8 ~~this board~~ June 28, 1985, by one of the following
9 means:

10 A. The person has passed an oral test based on
11 Title 38, chapter 3, subchapter II-B, and any
12 rules promulgated thereunder by the Board of En-
13 vironmental Protection concerning underground oil
14 storage tank installations;

15 B. The person has passed a written test based on
16 Title 38, chapter 3, subchapter II-B, and any
17 rules promulgated thereunder by the Board of En-
18 vironmental Protection concerning underground oil
19 storage tank installations; or

20 C. The person has completed successful installa-
21 tion of an underground oil storage tank under the
22 supervision of a designated representative of the
23 Department of Environmental Protection.

24 Sec. 46. 32 MRSA §10011, sub-§§2 and 3, as en-
25 acted by PL 1985, c. 496, Pt. A, §2, are amended to
26 read:

27 2. Content. The written examination shall test
28 the applicant's knowledge of the skills and knowledge
29 relating to storage tank installation and such other
30 subjects as the board, with the advice of the advis-
31 ory board, requires to determine the applicant's fit-
32 ness to practice. ~~The~~ After consideration of any
33 recommendations of the advisory board, the board
34 shall approve an examination for underground oil
35 storage tank installers and establish standards for
36 an acceptable performance.

37 3. Time and place. Applicants for certification
38 shall be examined at a time and place and under such
39 supervision as the ~~board~~ commissioner requires. Ex-
40 aminations shall be given at least twice each year at
41 such places as the ~~board~~ commissioner determines.

1 The board commissioner shall give reasonable public
2 notice of these examinations in accordance with ~~its~~
3 applicable rules.

4 Sec. 47. 32 MRSA §10015, sub-§2, as enacted by
5 PL 1985, c. 496, Pt. A, §2, is amended to read:

6 2. Disciplinary action; grounds. The board may
7 suspend or revoke a certificate pursuant to Title 5,
8 section 10004. The board may refuse to issue or re-
9 new a certificate or the Administrative Court may
10 suspend, revoke or refuse to renew a certificate of
11 any ~~certified~~ person certified. The following shall
12 be grounds for an action to modify, suspend, revoke
13 or refuse to issue or renew a certificate:

14 A. The practice of any fraud or deceit in ob-
15 taining a certificate under this chapter or in
16 connection with services rendered within the
17 scope of the certificate issued;

18 B. Unprofessional conduct, including any gross
19 negligence, incompetency or misconduct in the
20 ~~certified person's~~ performance of the work of un-
21 derground oil storage tank installation, or vio-
22 lation of any standard of professional behavior
23 which has been established by the board;

24 C. Subject to the limitation of Title 5, chapter
25 341, conviction of a crime which involves dishon-
26 esty or false statement or which relates directly
27 to the practice for which the ~~certified~~ person is
28 certified or conviction of any crime for which
29 imprisonment for one year or more may be imposed;
30 or

31 D. Any violation of this chapter or any rule
32 adopted by the board.

33 Sec. 48. Transition. This Act does not affect in
34 any manner either the identity or term of any member
35 of any board or commission, nor does it affect the
36 validity or term of any certificate or license issued
37 prior to the effective date of this Act.

38 All existing regulations currently in effect and
39 operation in departments and agencies affected by

1 this reorganization shall continue in effect, unless
2 in conflict with this Act, until rescinded or
3 amended. For purposes of the preceding sentence only,
4 "regulation" shall include, but not be limited to,
5 any rule, order, administrative procedure, policy,
6 determination, directive, authorization, permit, li-
7 cense, privilege, requirement, designation or agree-
8 ment.

9 All employees, property, equipment and records of
10 each occupational licensing board or commission shall
11 be transferred to the appropriate division of the Bu-
12 reau of Professional Regulation on or before the ef-
13 fective date of this Act. All funds retained by or
14 for the benefit of any occupational licensing board
15 or commission shall be transferred to the appropriate
16 fund established by section 5 of this Act, to be
17 maintained by the Treasurer of State.

18 On the effective date of this Act, incumbent un-
19 classified state employees of the occupational li-
20 censing boards or commissions affected by this Act
21 shall be transferred to the classified service.
22 Property, equipment and records transferred to the
23 bureau shall be subject to the custody and control of
24 the commissioner.

25 Notwithstanding the Maine Revised Statutes, Title
26 5, section 1585, and related appropriation and allo-
27 cation acts, all positions, property, equipment and
28 records and all accrued expenditures, assets, liabil-
29 ities, balances of appropriations and allocations,
30 transfers, revenues or other available funds in any
31 account, or subdivision of an account, of any agency
32 to be reallocated to another department strictly as a
33 result of this reorganization, shall be transferred
34 to the appropriate place in the new structure by the
35 State Controller, upon recommendation of the depart-
36 ment head, the State Budget Officer and upon approval
37 of the Governor.

38 Any occupational board of commission that holds a
39 leasehold interest in real property on the effective
40 date of this Act shall take such steps as may be nec-
41 essary to terminate the lease and vacate the premises
42 in order to accomplish physical relocation to offices
43 of the Bureau of Professional Regulation as soon as

1 feasible. After June 30, 1986, no occupational li-
2 censing board nor division within the Bureau of Pro-
3 fessional Regulation shall enter into or extend any
4 leasehold interest in real property without the ap-
5 proval of the Governor.

6 The Bureau of Public Improvements is directed to
7 relocate all occupational boards and commissions af-
8 fected by this Act that are operating from leased of-
9 fice space or other premises into a central office
10 building or facility for the Department of Profes-
11 sional and Financial Regulation. The department may
12 enter into a lease-purchase or other financing agree-
13 ment that results in the ultimate ownership of the
14 office building or facility by the State. The term of
15 the agreement shall not exceed 20 years. The authori-
16 ty to discontinue any or all payments for the facili-
17 ty in the event future funds or appropriations for
18 this purpose are not made available by the Legisla-
19 ture shall be stipulated in the agreement. It is the
20 intent of the Legislature that all entities within
21 the department currently leasing or prospectively
22 needing office space shall participate in this con-
23 solidation of office space.

24 Sec. 49. Effective date. This Act shall take ef-
25 fect July 1, 1986. The Bureau of Professional Regula-
26 tion established by this Act, and its constituent
27 boards and commissions, shall be physically consoli-
28 dated as soon as practicable after the effective date
29 of this Act.

30 FISCAL NOTE

31 The adoption of the uniform professional license
32 fees contained in this Act will for fiscal year 1987
33 and thereafter increase dedicated revenues by approx-
34 imately \$300,000 for each year. A 10% decline in the
35 number of licensees is projected for fiscal year
36 1987.

37 The transfer of the Board of Boiler Rules and the
38 Elevator and Tramway Safety Board from the General
39 Fund to the newly established Trades Boards Fund
40 will, in fiscal year 1987, increase undedicated reve-
41 nue to the General Fund by an amount which cannot be
42 accurately determined.

1 In fiscal year 1988 and beyond, this transfer
2 will result in an annual net savings to the General
3 Fund as it will no longer be supporting these 2
4 boards, approximately \$250,000 yearly appropriation
5 and \$100,000 yearly income, a net savings of \$150,000
6 annually.

7

STATEMENT OF FACT

8 State Government includes 46 occupational licens-
9 ing boards which were created between 1877 and 1985.
10 Together they regulate over 70 types and levels of
11 trades and occupations.

12 Licensing boards exist to protect the public.
13 They do so by qualifying applicants for licensure, by
14 preventing unlicensed practice and by disciplining
15 licensed practitioners who are incompetent or who act
16 improperly. Beyond this, it is difficult to cite any-
17 thing which applies to all Maine licensing boards;
18 they vary so greatly in their powers, duties, respon-
19 sibilities, performance and means. Their membership
20 ranges from 3 to 12 persons and the number of their
21 licensees from 10 to over 17,000.

22 Twenty-four of the 46 boards affected by this
23 bill are in the Department of Business, Occupational
24 and Professional Regulation, another 6 are affiliated
25 with it for reporting. The remaining 16 boards are
26 attached to or affiliated with various other depart-
27 ments or are totally autonomous. Licensing boards are
28 located in communities throughout the State. Some
29 still operate out of private homes, offices or busi-
30 nesses.

31 Passage of this bill increases the regulatory au-
32 thority of all Maine licensing boards, gives them
33 uniform access to adequate professional, technical
34 and legal services, makes all of them readily availa-
35 ble 40 hours a week in a public place, permits the
36 development of a uniform complaint and investigation
37 handling and reporting system, enhances the
38 Legislature's ability to oversee and evaluate profes-
39 sional licensing and establishes or increases public
40 confidence in professional self regulation through

1 public agencies. Sections 1 to 13 and 22 to 47 of
2 this bill are technical amendments which implement
3 throughout the laws the substance of the bill con-
4 tained in sections 14 to 21, 48 and 49.

5 Under this system, all Maine licensing boards
6 will once again have authority to suspend licenses
7 for up to 90 days, impose limited civil penalties and
8 enter into consent agreements. Boards will retain
9 their exclusive authority to set standards for licen-
10 sure and for professional practice, to prepare or ap-
11 prove examinations and will continue to make final
12 decisions with respect to disciplinary actions. Com-
13 plaints, investigations and adjudicatory hearings
14 will be handled by a shared professional staff, with
15 the various boards acting upon findings. These fea-
16 tures plus standardized basic license fees are the
17 emerging nationally norm.

18 Sections 1 to 14 and 22 to 47, determine which of
19 the licensing boards named in the Maine Revised Stat-
20 utes, Title 5, shall not be in the new Bureau of Pro-
21 fessional Regulation because they are dependent for
22 technical support on another department or are essen-
23 tial to that department's operation. The Auctioneers
24 Advisory Board, formerly advisory to the Department
25 of Business, Occupational and Professional Regula-
26 tion, is designated a licensing board. Four former
27 licensing boards are designated as advisory. They are
28 the Board of Underground Oil Storage Tank Installers
29 made advisory to the Department of Environmental Pro-
30 tection; the Board of Examiners for the Licensing of
31 Guides and the Junior Maine Guides and Trip Leaders'
32 Curriculum Board made advisory to the Department of
33 Inland Fisheries and Wildlife; the Board of Certifi-
34 cation (Water Treatment Plant Operators) made advis-
35 ory to the Department of Human Services. The Joint
36 Committee of Licensure-Certification for School Psy-
37 chological Services is designated an intergovernmental
38 agency.

39 Section 14 is a "sunrise" provision. It sets spe-
40 cific showing to be made by groups seeking the cre-
41 ation of future licensing boards. The same standards
42 are applied to requests for "substantially expanding"
43 the authority of existing boards.

1 Section 15 renames the department to indicate
2 clearly what it regulates and removes the too broad
3 term "business."

4 Section 16 creates a Bureau of Professional Regu-
5 lation.

6 Section 17 makes the commissioner the liaison be-
7 tween and among the agencies within the department as
8 well as between them and the Governor.

9 Section 18 reenforces the complete independence
10 of the agencies within the department in the exercise
11 of their discretionary, regulatory and licensing au-
12 thority.

13 Section 19 continues the department's Division of
14 Administrative Services exactly as it now exists.

15 Section 21 creates within the Bureau of Profes-
16 sional Regulation 3 divisions and places each board
17 within the appropriate division.

18 Section 21 also defines and authorizes the pro-
19 fessional services to be shared by all licensing
20 boards, in particular, investigators and hearing ex-
21 aminers. This is a major policy change as it provides
22 for complaints to be reviewed first by the bureau,
23 investigated and presented to the appropriate licens-
24 ing board for disposition. Each board now conducts
25 its own investigations. Adjudicatory hearings will be
26 conducted by hearing officers rather than by board
27 members. The bureau investigations are to be super-
28 vised by the Senior Assistant Attorney General for
29 reasons of confidentiality.

30 The bureau will develop and use a uniform com-
31 plaint analysis system. The bureau may join national
32 disciplinary information exchanges. This section also
33 sets the minimum size of the legal staff to be dedi-
34 cated to licensing board work.

35 This section establishes uniform license fees at
36 the 4 most common practice levels; provides excep-
37 tions for boards with over 10,000 licensees, where
38 economies of scale are achieved, and for the Maine
39 Athletic Commission, the activities of which are

1 funded by a 5% gates receipt tax; and provides for
2 application, examination and business license fees as
3 reasonable and necessary for those activities.

4 This section establishes 3 dedicated funds to re-
5 place the existing 42 separate accounts.

6 This section also makes all occupational licenses
7 annual, which is what most are now. This is important
8 during time of rapid change particularly for budget-
9 ing reasons.

10 Until recent years, all licensing boards could,
11 after hearing and for good cause, suspend licenses.
12 This section restores that authority which is now
13 held only by the Real Estate Commission. Suspension,
14 as all other board actions, is appealable to the
15 courts. This authority is very important to a licens-
16 ing board's standing with its licensees and for effi-
17 cient discipline. This section confers explicit au-
18 thority for all licensing boards to enter into con-
19 sent agreements.

20 This section also confers upon the department au-
21 thority to apportion administrative services' costs
22 throughout the department and the costs of technical
23 and professional support services throughout the Bu-
24 reau of Professional Regulation.

25 Section 48 continues the terms of all licensing
26 board members; maintains all rules and proceedings;
27 transfers personnel, funds and properties to the di-
28 vision within the Bureau of Professional Regulation;
29 protects the jobs of incumbent employees; continues
30 appropriations and allocations; governs existing
31 leases; and directs the Bureau of Public Improvements
32 to provide or allow the department to lease purchase
33 facilities.

1 Section 49 makes this Act effective at the begin-
2 ning of the next fiscal year and directs that the
3 system herein created be produced as soon as practi-
4 cable after that.

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