

MAINE STATE LEGISLATURE

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L.D. 2397

(Filing No. H-645)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
SECOND REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 1748, L.D. 2397,
Bill, "AN ACT to Require Licensure of Certain Railroad
Personnel."

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Amend the bill by striking out everything after
the title and inserting in its place the following:

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

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Whereas, in order for the Board of Licensure of
Railroad Personnel to have time to establish licensing
procedures and for individuals required under this Act
to obtain licenses to have time to pass the
requirements by December 15, 1988, the board needs to
be appointed and start to work as soon as possible; and

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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,

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

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1 Sec. 1. 5 MRSA §12004, sub-§1, ¶A, sub-¶(34-A)
2 is enacted to read:

3 (34-A) Board of Licensure Expenses 32 MRSA
4 of Railroad Only \$4145
5 Personnel

6 Sec. 2. 32 MRSA c. 60 is enacted to read:
7 CHAPTER 60

8 RAILROAD PERSONNEL

9 SUBCHAPTER I

10 GENERAL PROVISIONS

11 §4140. Declaration of purpose

12 The purpose of this chapter is to provide for the
13 safety of property, railroad workers and the general
14 public by requiring certain railroad personnel to
15 demonstrate adequate training and competency.

16 §4141. Definitions

17 As used in this chapter, unless the context
18 otherwise indicates, the following terms have the
19 following meanings.

20 1. Applicant. "Applicant" means the individual
21 who wishes to act as a brakeman, carman, conductor,
22 flagman, locomotive operator or train dispatcher.

23 2. Board. "Board" means the Board of Licensure
24 of Railroad Personnel.

25 3. Commissioner. "Commissioner" means the
26 Commissioner of Professional and Financial Regulation.

27 4. Department. "Department" means the Department
28 of Professional and Financial Regulation.

29 5. Railroad personnel. For the purposes of this
30 chapter, an individual is acting as one of the

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1 following personnel if that individual performs the
2 duties of that personnel classification, without
3 regard to the individual's actual job title.

4 A. "Carman" means a person who inspects railroad
5 cars for compliance with the standards of the
6 Federal Railroad Administration and certifies or
7 withholds certification of the suitability of a
8 car for service.

9 B. "Conductor" means a person who is responsible
10 for all movements of a train including the consist
11 of a train and the location of cars on the train,
12 who keeps and implements all work orders for
13 operation of the train and who is responsible for
14 manifests showing the cargo of the train.

15 C. "Locomotive operator" means a person who
16 operates a locomotive by controlling the
17 locomotive throttle and who is responsible for
18 signaling the train's approach to a rail-highway
19 crossing.

20 D. "Train dispatcher" means a person who controls
21 the operation of all train activity on track
22 within a given territory.

23 SUBCHAPTER II

24 BOARD OF LICENSURE OF
25 RAILROAD PERSONNEL

26 \$4145. Board of licensure; appointment; vacancies;
27 removal; compensation

28 1. Establishment and membership. The Board of
29 Licensure of Railroad Personnel, as established by
30 Title 5, chapter 379, shall be within the department
31 and shall be composed of 9 members, one of whom shall
32 be the Commissioner of Labor or the Commissioner of
33 Labor's representative, one of whom shall be a state
34 railroad inspector and 7 of whom shall be appointed by
35 the Governor.

36 Two of the members appointed by the Governor shall

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1 represent railroad labor, 2 shall represent railroad
2 management and 3 shall be representatives of the
3 general public.

4 2. Terms of appointment. Members appointed by
5 the Governor shall be appointed for terms of 3 years.
6 To the first board established under this chapter, the
7 Governor shall appoint 2 board members for terms of
8 one year, 3 for terms of 2 years and 2 for terms of 3
9 years. No member may serve for more than 2
10 consecutive 3-year terms.

11 Any appointive member of the board may be removed from
12 office for cause by the Governor.

13 3. Compensation. The members of the board shall
14 be compensated according to the provisions of Title 5,
15 chapter 379, provided that expenses do not exceed the
16 fees collected by the board. If the fees to be
17 collected under this chapter are insufficient to pay
18 the expenses provided by this section, the board
19 members shall be entitled to a pro rata payment in any
20 years in which those fees are insufficient.

21 4. Vacancies. Any vacancy on the board caused by
22 death, resignation or removal of any member shall be
23 filled by the appointment of a person, with the same
24 qualifications as the board member being replaced, to
25 hold office during the unexpired term of the member
26 whose place is being filled.

27 5. Chairman. Annually, in the month of January,
28 the members of the board shall choose one of their
29 members to act as chairman.

30 §4146. Administrative provisions

31 1. Employees. The commissioner may appoint,
32 subject to the Civil Service Law, such employees as
33 may be necessary to carry out this chapter. Any
34 person so employed shall be located in the department
35 and under the administrative and supervisory direction
36 of the commissioner.

37 2. Meetings. The board shall hold regular

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1 meetings semi-annually and such other meetings as it
2 determines necessary. The board shall keep correct
3 records of all its proceedings and is authorized to
4 make rules necessary for carrying out this chapter and
5 to provide for reciprocity of licensing with similar
6 boards of other states which maintain standards at
7 least equal to this State.

8 3. Budget. The board shall submit to the
9 commissioner its budgetary requirements in the same
10 manner as provided in Title 5, section 1665.

11 §4147. Board of licensure; powers and duties

12 1. Powers. The board shall administer and
13 enforce this chapter and evaluate the qualifications
14 of applicants for licensing. The board may examine
15 witnesses and administer oaths and shall investigate
16 or cause to be investigated any complaints made to it
17 or any cases of noncompliance with or violation of
18 this chapter.

19 2. Rules. The board may adopt, in accordance
20 with the Maine Administrative Procedure Act, Title 5,
21 chapter 375, rules relating to qualifications of
22 personnel to carry out the policy of this chapter,
23 including, but not limited to, rules relating to
24 licensing and establishment of adequate standards of
25 training for persons licensed to act as carmen,
26 conductors, locomotive operators or train dispatchers
27 on any railroad operating in the State.

28 3. Hearings. Hearings may be conducted by the
29 board to assist with investigations, to determine
30 whether grounds exist for suspension, revocation or
31 denial of a license or as otherwise deemed necessary
32 to fulfill its responsibilities under this chapter.
33 Hearings shall be conducted in accordance with the
34 Maine Administrative Procedure Act, Title 5, chapter
35 375, subchapter IV, to the extent applicable.

36 4. Records. The board shall keep such records
37 and minutes as are necessary to the ordinary dispatch
38 of its functions.

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1 A. Passage of an examination approved by the
2 board, covering the rules of operation of the
3 railroad for whom that person is employed;

4 B. Successful completion of classroom and shop
5 instruction approved by the board in the skills
6 which the position requires;

7 C. Successful completion of a training program
8 approved by the board, which provides actual or
9 simulated experience in the job for which the
10 person seeks licensure; and

11 D. Such other requirements as may be necessary to
12 assure the safety of property, railroad workers
13 and the general public. Those requirements shall
14 be established by the board through rulemaking
15 pursuant to Title 5, chapter 375.

16 4. License. Any person who receives a license of
17 authority to act as a carman, conductor, locomotive
18 operator or train dispatcher shall have the license
19 available for inspection any time that person is
20 performing the duties allowed by the license.

21 5. Term of license. License terms are as follows.

22 A. A license shall be for 2 years and expire on
23 December 31st or on such other date as the
24 commissioner determines. Notice of expiration
25 shall be mailed to each licensee's last known
26 address at least 30 days in advance of the
27 expiration of the license. The notice must
28 include any requests for information necessary for
29 renewal.

30 Licenses may be renewed up to 90 days after the
31 date of expiration upon payment of a late fee of
32 \$10 in addition to the renewal fee. Any person
33 who submits an application for renewal more than
34 90 days after the licensing renewal date shall be
35 subject to all requirements governing new
36 applicants under this chapter.

1 B. Each license renewal must be accompanied by
2 evidence of continuing education or other
3 requirements as established in rule by the board.

4 C. The board shall adopt rules establishing
5 requirements for a temporary license within the
6 scope of this chapter.

7 §4149. Disciplinary actions

8 1. Complaints. The board may order an
9 investigation of a complaint on its own motion or on
10 written complaint filed with it regarding
11 noncompliance with or violation of any section of this
12 chapter or of any rules adopted by the board.

13 2. Disciplinary actions; grounds. The board may
14 suspend or revoke a license pursuant to Title 5,
15 section 10004. In addition, the board may refuse to
16 renew or the Administrative Court may revoke, suspend
17 or refuse to renew any license issued under this
18 chapter on any of the following grounds:

19 A. The practice of any fraud or deceit in
20 obtaining a license;

21 B. Any negligence, incompetency or misconduct in
22 the performance of the work for which the licensee
23 is licensed; or

24 C. Violation of this chapter or of any rule of
25 the board.

26 3. Reinstatement. The board, for reasons it
27 determines sufficient, may reinstate any person whose
28 license has been revoked, providing 6 or more members
29 of the board vote in favor of that reissuance.

30 §4150. Fees

31 1. Amount. Application fees for licenses or
32 renewals may be established by the board in amounts
33 which are reasonable and necessary, but not to exceed
34 \$200.

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1 2. Multiple licenses. The board may waive part
 2 or all of a fee or establish a special fee for
 3 individuals receiving more than one license.

4 3. Deposit of fees. All fees received by the
 5 board shall be paid to the Treasurer of State and
 6 deposited into the General Fund.

7 Sec. 3. Report. The board shall report to the
 8 joint standing committee of the Legislature having
 9 jurisdiction over business legislation no later than
 10 February 15, 1989, on the necessity and desirability
 11 of licensing brakemen, flagmen or other railroad
 12 personnel deemed necessary to be licensed by the board.

13 Sec. 4. Appropriation. The following funds are
 14 appropriated from the General Fund to carry out the
 15 purposes of this Act.

16	<u>1988-89</u>
17	<u>PROFESSIONAL AND BUSINESS</u>
18	<u>REGULATION, DEPARTMENT OF</u>
19	Board of Licensure of
20	Railroad Personnel
21	Positions (1)
22	Personal services \$20,000
23	All other 8,000
24	
25	Total <u>\$28,000</u>

26 Emergency clause. In view of the emergency
 27 cited in the preamble, this Act shall take effect when
 28 approved; except that the penalty provisions under
 29 section 4148, subsection 2 shall take effect on
 30 December 15, 1988.

31 FISCAL NOTE

32 This bill will have the following effect on
 33 revenues:

