

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2397

H.P. 1748 House of Representatives, March 1, 1988  
Reported by Representative CARTER for the Legislative  
Task Force on Railroads pursuant to Public Law 1987, Chapter 5.  
Reference to the Committee on Business Legislation  
suggested and printing ordered under Joint Rule 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-EIGHT

AN ACT to Require Licensure of Certain  
Railroad Personnel.

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

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

(34-A)	<u>Board of Licensure</u>	<u>Expenses</u>	<u>32 MRSA</u>
	<u>of Railroad</u>	<u>Only</u>	<u>§4145</u>
	<u>Personnel</u>		

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

1                                    CHAPTER 60

2                                    RAILROAD PERSONNEL

3                                    SUBCHAPTER I

4                                    GENERAL PROVISIONS

5 §4140. Declaration of purpose

6         The purpose of this chapter is to provide for the  
7 safety of property, railroad workers and the general  
8 public by requiring certain railroad personnel to  
9 demonstrate adequate training and competency.

10 §4141. Definitions

11         As used in this chapter, unless the context  
12 otherwise indicates, the following terms have the  
13 following meanings.

14         1. Applicant. "Applicant" means the individual  
15 who wishes to act as a brakeman, carman, conductor,  
16 flagman, locomotive operator or train dispatcher.

17         2. Board. "Board" means the Board of Licensure  
18 of Railroad Personnel.

19         3. Commissioner. "Commissioner" means the  
20 Commissioner of Professional and Financial Regulation.

21         4. Department. "Department" means the Department  
22 of Professional and Financial Regulation.

23         5. Railroad personnel. For the purposes of this  
24 chapter, an individual is acting as one of the  
25 following personnel if that individual performs the  
26 duties of that personnel classification, without  
27 regard to the individual's actual job title.

28         A. "Brakeman" means a person who applies the  
29 brakes to stop a train during the normal operation  
30 of the train and who assists the locomotive  
31 operator in making observations of the track and  
32 other conditions during the operation of a train.

33         B. "Carman" means a person who inspects railroad  
34 cars for compliance with the standards of the  
35 Federal Railroad Administration and certifies or

1 withholds certification of the suitability of a  
2 car for service.

3 C. "Conductor" means a person who is responsible  
4 for all movements of a train including the consist  
5 of a train and the location of cars on the train,  
6 who keeps and implements all work orders for  
7 operation of the train and who is responsible for  
8 manifests showing the cargo of the train.

9 D. "Flagman" means a person who is responsible  
10 for stopping vehicular traffic at a railroad  
11 crossing and for signaling the locomotive operator  
12 when it is safe to continue.

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

18 F. "Train dispatcher" means a person who controls  
19 the operation of all train activity on track  
20 within a given territory.

21 SUBCHAPTER II

22 BOARD OF LICENSURE OF  
23 RAILROAD PERSONNEL

24 §4145. Board of licensure; appointment; vacancies;  
25 removal; compensation

26 1. Establishment and membership. The Board of  
27 Licensure of Railroad Personnel, as established by  
28 Title 5, chapter 379, shall be within the department  
29 and shall be composed of 9 members, one of whom shall  
30 be the commissioner, one of whom shall be the  
31 Commissioner of Labor or the Commissioner of Labor's  
32 representative, one of whom shall be a state railroad  
33 inspector and 6 of whom shall be appointed by the  
34 Governor.

35 Two of the members appointed by the Governor shall  
36 represent railroad labor, 2 shall represent railroad  
37 management and 2 shall be representatives of the  
38 general public.

39 2. Terms of appointment. Members appointed by  
40 the Governor shall be appointed for terms of 3 years.

1 To the first board established under this chapter, the  
2 Governor shall appoint 2 board members for terms of  
3 one year, 2 for terms of 2 years and 2 for terms of 3  
4 years.

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

7 3. Compensation. The members of the board shall  
8 be compensated according to the provisions of Title 5,  
9 chapter 379, provided that expenses do not exceed the  
10 fees collected by the board. If the fees to be  
11 collected under this chapter are insufficient to pay  
12 the expenses provided by this section, the board  
13 members shall be entitled to a pro rata payment in any  
14 years in which those fees are insufficient.

15 4. Vacancies. Any vacancy on the board caused by  
16 death, resignation or removal of any member shall be  
17 filled by the appointment of a person, with the same  
18 qualifications as the board member being replaced, to  
19 hold office during the unexpired term of the member  
20 whose place is being filled.

21 5. Chairman. Annually, in the month of January,  
22 the members of the board shall choose one of their  
23 members to act as chairman.

24 §4146. Administrative provisions

25 1. Employees. The commissioner may appoint,  
26 subject to the Civil Service Law, such employees as  
27 may be necessary to carry out this chapter. Any  
28 person so employed shall be located in the department  
29 and under the administrative and supervisory direction  
30 of the commissioner.

31 2. Meetings. The board shall hold regular  
32 meetings semi-annually and such other meetings as it  
33 determines necessary. The board shall keep correct  
34 records of all its proceedings and is authorized to  
35 make rules deemed necessary for carrying out this  
36 chapter and to provide for reciprocity of licensing  
37 with similar boards of other states which maintain  
38 standards at least equal to this State.

39 3. Budget. The board shall submit to the  
40 commissioner its budgetary requirements in the same  
41 manner as provided in Title 5, section 1665.

1 §4147. Board of licensure; powers and duties

2 1. Powers. The board shall administer and  
3 enforce this chapter and evaluate the qualifications  
4 of applicants for licensing. The board may examine  
5 witnesses and administer oaths and shall investigate  
6 or cause to be investigated any complaints made to it  
7 or any cases of noncompliance with or violation of  
8 this chapter.

9 2. Rules. The board may adopt, in accordance  
10 with the Maine Administrative Procedure Act, Title 5,  
11 chapter 375, rules relating to qualifications of  
12 personnel to carry out the policy of this chapter,  
13 including, but not limited to, rules relating to  
14 licensing and establishment of adequate standards of  
15 training for persons licensed to act as brakemen,  
16 carmen, conductors, flagmen, locomotive operators or  
17 train dispatchers on any railroad operating in the  
18 State.

19 3. Hearings. Hearings may be conducted by the  
20 board to assist with investigations, to determine  
21 whether grounds exist for suspension, revocation or  
22 denial of a license or as otherwise deemed necessary  
23 to fulfill its responsibilities under this chapter.  
24 Hearings shall be conducted in accordance with the  
25 Maine Administrative Procedure Act, Title 5, chapter  
26 375, subchapter IV, to the extent applicable.

27 4. Records. The board shall keep such records  
28 and minutes as are necessary to the ordinary dispatch  
29 of its functions.

30 5. Contracts. The board may enter into contracts  
31 to carry out its responsibilities under this chapter.

32 6. Reports. No later than August 1st of each  
33 year, the board shall submit to the commissioner, for  
34 the preceding fiscal year, its annual report of its  
35 operations together with such comments and  
36 recommendations as the commissioner deems essential.

37 SUBCHAPTER III

38 LICENSE

39 §4148. License required; issuance

1 1. License required. Licenses shall be required  
2 as follows.

3 A. No person may act as a brakeman, carman,  
4 conductor, flagman, locomotive operator or train  
5 dispatcher in the operation of a railroad unless  
6 licensed by the board to do so.

7 B. No railroad company may allow a person to act  
8 as a brakeman, carman, conductor, flagman,  
9 locomotive operator or train dispatcher unless  
10 licensed by the board to do so.

11 2. Penalties. Penalties shall be as follows.

12 A. Any person who acts as a brakeman, carman,  
13 conductor, flagman, locomotive operator or train  
14 dispatcher and who is not licensed to do so is  
15 guilty of a Class D crime.

16 B. Any railroad company which allows any person  
17 to act as a brakeman, carman, conductor, flagman,  
18 locomotive operator or train dispatcher who is not  
19 licensed to do so is guilty of a Class D crime.

20 3. Application; qualifications. The board shall  
21 issue a license to any person who files a sworn or  
22 attested application for a license and who meets the  
23 following qualifications:

24 A. Passage of an examination approved by the  
25 board, covering the rules of operation of the  
26 railroad for whom that person is employed;

27 B. Successful completion of classroom and shop  
28 instruction approved by the board in the skills  
29 which the position requires;

30 C. Successful completion of a training program  
31 approved by the board, which provides actual or  
32 simulated experience in the job for which the  
33 person seeks licensure; and

34 D. Such other requirements as may be necessary to  
35 assure the safety of property, railroad workers  
36 and the general public. Those requirements shall  
37 be established by the board through rulemaking  
38 pursuant to Title 5, chapter 375.

39 4. License. Any person who receives a license of

1 authority to act as a brakeman, carman, conductor,  
2 flagman, locomotive operator or train dispatcher shall  
3 have the license available for inspection any time  
4 that person is performing the duties allowed by the  
5 license.

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

7 A. A license shall expire annually on December  
8 31st or on such other date as the commissioner  
9 determines. Notice of expiration shall be mailed  
10 to each licensee's last known address at least 30  
11 days in advance of the expiration of the license.  
12 The notice must include any requests for  
13 information necessary for renewal.

14 Licenses may be renewed up to 90 days after the  
15 date of expiration upon payment of a late fee of  
16 \$10 in addition to the renewal fee. Any person  
17 who submits an application for renewal more than  
18 90 days after the licensing renewal date shall be  
19 subject to all requirements governing new  
20 applicants under this chapter.

21 B. Each license renewal must be accompanied by  
22 evidence of continuing education or other  
23 requirements as established in rule by the board.

24 C. The board shall adopt rules establishing  
25 requirements for a temporary license within the  
26 scope of this chapter.

27 §4149. Disciplinary actions

28 1. Complaints. The board may order an  
29 investigation of a complaint on its own motion or on  
30 written complaint filed with it regarding  
31 noncompliance with or violation of any section of this  
32 chapter or of any rules adopted by the board.

33 2. Disciplinary actions; grounds. The board may  
34 suspend or revoke a license pursuant to Title 5,  
35 section 10004. In addition, the board may refuse to  
36 renew or the Administrative Court may revoke, suspend  
37 or refuse to renew any license issued under this  
38 chapter on any of the following grounds:

39 A. The practice of any fraud or deceit in  
40 obtaining a license;



1 B. Any negligence, incompetency or misconduct in  
2 the performance of the work for which the licensee  
3 is licensed; or

4 C. Violation of this chapter or of any rule of  
5 the board.

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

10 §4150. Fees

11 1. Amount. Application fees for licenses or  
12 renewals may be established by the board in amounts  
13 which are reasonable and necessary, but not to exceed  
14 \$100.

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

18 3. Deposit of fees. All fees received by the  
19 board shall be paid to the Treasurer of State to be  
20 used for carrying out this chapter. Any balance of  
21 fees shall not lapse, but shall be carried forward as  
22 a continuing account to be expended for the same  
23 purposes in the following fiscal years.

24 STATEMENT OF FACT

25 The Legislative Task Force on Railroads heard  
26 repeated concerns about untrained or undertrained  
27 personnel operating trains. This bill requires  
28 certain railroad personnel to receive classroom and  
29 experiential training and to be licensed for the job  
30 they perform. Successful completion of approved  
31 railroad company training programs would qualify an  
32 applicant for a license.

33 4757020288