

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2328

H.P. 1682

House of Representatives, February 16, 1990

Reported by Representative PARADIS from the Joint Standing Committee on Judiciary.

Reference to the Joint Standing Committee on Judiciary suggested and printing ordered under Joint Rule 19.

Ed Pert

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Implement the Recommendations of the Court Jurisdiction Study.



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

PART A

Sec. A-1. 4 MRSA §105-A is enacted to read:

§105-A. Appellate jurisdiction of decisions of occupational licensing boards and commissions

The Superior Court has exclusive jurisdiction to review disciplinary decisions of occupational licensing boards and commissions taken pursuant to Title 10, section 8003. The Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII, governs this procedure as far as applicable.

Sec. A-2. 4 MRSA §164, sub-§12, ¶D, as amended by PL 1977, c. 696, §22, is further amended to read:

D. Any person who has been found guilty of or who has signed a plea of guilty to, or who has been found to have committed or who has signed a plea admitting or admitting with an explanation, one 2 or more previous traffic offenses subject to this subsection within a ~~12-month's~~ 12-month period shall not be permitted to appear before the violations clerk unless the court shall, by order, permit such appearance. Each waiver of hearing filed under this subsection shall recite on the oath or affirmation of the offender whether or not ~~he has been~~ the offender previously has been found guilty of or ~~to have committed or~~ has previously signed a plea of guilty to, or has been found to have committed or has signed a plea admitting, or admitting with an explanation one, 2 or more traffic offenses within a ~~12-month's~~ 12-month period. Swearing falsely to any such statement shall be a civil violation for which a forfeiture not to exceed \$50 may be adjudged.

Sec. A-3. 4 MRSA §183 is enacted to read:

§183. Jurisdiction; administrative law

1. Licensing jurisdiction. Except as provided in Title 5, section 10004, Title 10, section 8003, subsection 5, Title 29, Title 32, chapter 113, and Title 35-A, section 3132, the District Court has exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General, to revoke or suspend licenses issued by the agency, and has original jurisdiction upon complaint of a licensing agency to determine whether renewal or reissuance of a license of that agency may be refused. The District Court has original concurrent jurisdiction to grant equitable relief in proceedings initiated by an agency

2 or the Department of the Attorney General alleging any violation
3 of a license or licensing laws or rules.

4 Notwithstanding any other provisions of law, a licensing agency
5 may not reinstate or otherwise affect a license suspended,
6 revoked or modified by the District Court pursuant to a complaint
7 filed by the Attorney General, without the approval of the
8 Attorney General.

10 2. Procedure. The following procedure applies to
11 administrative law cases under this section.

12 A. On receipt of a written complaint from an agency or the
13 Attorney General, a Judge of the District Court shall
14 conduct a hearing on the applicable facts and law.

15 B. At the request of a party in a contested case, a judge
16 of the District Court shall issue subpoenas for the
17 attendance of witnesses or for the production of documents.
18 Subpoenas may also be issued on the judge's own motion.

19 3. Emergency proceedings. The District Court has
20 jurisdiction to revoke temporarily or suspend a license without
21 notice or hearing upon the verified complaint of an agency or the
22 Attorney General. Such a complaint must be accompanied by
23 affidavits demonstrating that summary action is necessary to
24 prevent an immediate threat to the public health, safety or
25 welfare. Upon issuance of an order revoking or suspending a
26 license under this subsection, the District Court shall promptly
27 schedule a hearing on the agency's complaint, which hearing takes
28 precedence over all other matters except older matters of the
29 same character on the docket of the court. Any order temporarily
30 suspending or revoking a license expires within 30 days of
31 issuance, unless renewed by the court after such hearing as the
32 court determines necessary.

33 Nothing in this section may be construed to abridge or affect the
34 jurisdiction of the Superior Court to issue injunctive relief or
35 to exercise other powers authorized by law or rule of the court.

36 4. Decisions. After hearing, on default or by agreement of
37 the parties, a Judge of the District Court may suspend, revoke or
38 modify the license of any party properly served with process, or
39 if the applicable law so provides the judge may order issuance of
40 a license to an applicant according to the terms of the
41 applicable law. The judge may take any other action with relation
42 to the party which could have been taken before the enactment of
43 former section 1155 by the agency involved in the hearing.

44 Every final decision of the District Court must be in writing or
45 stated in the record, and include findings of fact and
46 conclusions of law sufficient to apprise the parties and any
47 interested parties.

2 interested member of the public of the basis for the decision. A
3 copy of the decisions must be delivered or promptly mailed to
4 each party to the proceeding or the party's representative of
5 record. Written notice of the party's rights to review of the
6 decision and of the action required, and the time within which
7 the action must be taken in order to exercise the right of
8 review, must be given to each party together with the decision.

9 5. Fines. Notwithstanding any other provisions of this
10 chapter, a Judge of the District Court, in that judge's
11 discretion, may impose a fine of a specific sum, which may not be
12 less than \$50 nor more than \$1,500 for any one offense, or other
13 limits as the laws relating to the licensing question may
14 provide. Such a fine may be imposed instead of or in addition to
15 any suspension, revocation or modification of a license by the
16 court. Section 1057 applies to any fine imposed by this
17 subsection.

18 Sec. A-4. 4 MRSA §451, as amended by PL 1989, c. 503, Pt. B,
19 §8, is further amended to read:

20 **§451. Establishment**

21 A Judicial Council, as established by Title 5, section
22 12004-I, subsection 51, shall make a continuous study of the
23 organization, rules and methods of procedure and practice of the
24 judicial system of the State, the work accomplished and the
25 results produced by that system and its various parts. The
26 council shall must be composed of the Chief Justice of the
27 Supreme Judicial Court, who shall also serve as chair, the
28 Attorney General, the Chief Justice of the Superior Court, the
29 Chief Judge of the District Court, the chairs of the joint
30 standing committee of the Legislature having jurisdiction over
31 judiciary matters or their designees, and the Dean of the
32 University of Maine System School of Law, each to serve ex
33 officio, and an Active or Retired Justice of the Supreme Judicial
34 Court, one Justice of the Superior Court, one Judge of the
35 District Court, one Judge of a Probate Court, one clerk of the
36 judicial courts, 2 members of the bar and 6 laymen members of the
37 public, to be appointed by the Governor. The appointments by the
38 Governor shall be are for such periods, not exceeding 4 years, as
39 he shall-determine the Governor determines.

40 Sec. A-5. 4 MRSA §453, as repealed and replaced by PL 1983,
41 c. 812, §11, is amended to read:

42 **§453. Expenses**

43 Each member shall-be-compensated is entitled to compensation
44 as provided in Title 5, chapter 379, out of any appropriation
45 made for the purpose and approved by the Chief Justice.
46 Legislative members are entitled to be compensated from the

2 legislative budget. The council may appoint one of its members
or some other suitable person to act as secretary for the council.

4 **Sec. A-6. 4 MRSA c. 25,** as amended, is repealed.

6 **Sec. A-7. Appropriation.** The following funds are appropriated
from the General Fund to carry out the purposes of this Act.

8
10 1990-91

12 **JUDICIAL DEPARTMENT**

14 **Courts - Supreme, Superior,
District and Administrative**

16 Positions (2)
18 Personal Services \$78,041

20 Provides funds for 2 additional computer
specialists.

22 **Courts - Supreme, Superior,
District and Administrative**

24 Positions (1)
26 Personal Services \$102,484

28 Provides funds for one additional District
Court Judge.

30 **JUDICIAL DEPARTMENT**

32 **TOTAL** \$180,525

34 **Sec. A-8. Transition.** On the effective date of this Act:

36 1. Administrative Court Judge or Associate Administrative
38 Court Judge. Any Administrative Court Judge or Associate
Administrative Court Judge whose term has not expired is a
40 District Court Judge until the expiration of that term, unless
sooner removed. The compensation of any Judge of the
42 Administrative Court converted to a District Court Judge by
reason of this Act shall not be reduced;

44 2. Active Retired Judge. Any Active Retired Judge of the
Administrative Court whose term has not expired is an Active
46 Retired District Court Judge until the expiration of that term,
unless sooner removed; and

48 3. Other Administrative Court personnel. Any other
50 Administrative Court personnel in service are transferred to the
District Court staff and are entitled to receive compensation at

2 a rate not less than the last pay range they received while
employed with the Administrative Court.

4 **PART B**

6 **Sec. B-1. Commission established.** There is established the
Commission on the Criminal Penalties in the Maine Revised
8 Statutes to determine the consistency of the penalties outside
the Maine Criminal Code with the penalties within the Maine
10 Criminal Code.

12 **Sec. B-2. Commission membership.** The commission shall
consist of 8 members to be appointed as follows: 2 members of
14 the Joint Standing Committee on Judiciary, one to be appointed by
the President of the Senate and one to be appointed by the
16 Speaker of the House of Representatives; 2 members of the Joint
Standing Committee on Transportation, one to be appointed by the
18 President of the Senate and one to be appointed by the Speaker of
the House of Representatives; 2 members of the Joint Standing
20 Committee on Fisheries and Wildlife, one to be appointed by the
President of the Senate and one to be appointed by the Speaker of
22 the House of Representatives; and 2 members of the Joint Standing
Committee on Marine Resources, one to be appointed by the
24 President of the Senate and one to be appointed by the Speaker of
the House of Representatives.

26 All appointments must be made no later than 30 days following the
28 effective date of this Act. The appointing authorities shall
notify the Executive Director of the Legislative Council upon
30 making their appointments. When appointment of all members of
the commission is completed, the Chair of the Legislative Council
32 shall call the commission together for its first meeting no later
than August 25, 1990. The commission shall select a chair from
34 among its members.

36 **Sec. B-3. Duties.** The commission shall compare the criminal
penalties for offenses established within the Maine Criminal Code
38 with the criminal penalties for offenses established in other
titles of the Maine Revised Statutes. The commission shall
40 determine if the penalties for offenses established outside of
the Maine Criminal Code are commensurate with the penalties for
42 similar Maine Criminal Code offenses.

44 **Sec. B-4. Staff.** The commission shall request staffing
assistance from the Legislative Council.

46 **Sec. B-5. Compensation; budget.** The members of the commission
48 who are Legislators are entitled to receive the legislative per
diem as defined in the Maine Revised Statutes, Title 3, section
50 2, for each day's attendance at the commission meetings. The
Executive Director of the Legislative Council shall administer
52 the commission budget.

2 5. Five Legislators, including 2 Senators, one of whom must
4 be a member of the Joint Standing Committee on the Judiciary,
6 appointed by the President of the Senate; and 3 members of the
8 House of Representatives, at least 2 of whom must be members of
the Joint Standing Committee on the Judiciary, appointed by the
Speaker of the House of Representatives;

10 6. A representative of the Governor's office appointed by
the Governor;

12 7. Four members of the public appointed by the Governor;

14 8. The president of the Maine State Bar Association or a
designee;

16 9. The executive director of Pine Tree Legal Assistance or
18 a designee;

20 10. The president of the Maine Trial Lawyers Association or
a designee;

22 11. The president of the Maine Prosecutors Association or a
24 designee;

26 12. The Attorney General or a designee; and

28 13. The Dean of the University of Maine School of Law or a
designee.

30 All appointments shall be made no later than 30 days following
32 the effective date of this Act. The appointing authorities shall
34 notify the Executive Director of the Legislative Council and the
36 State Court Administrator when the appointments have been made.
The chair of the commission shall be appointed jointly by the
38 Governor, the Chief Justice of the Supreme Judicial Court, the
40 President of the Senate, and the Speaker of the House of
Representatives no later than July 25, 1990. The chair may be
appointed from among the members or may be appointed from outside
the membership. The chair shall call the first meeting no later
than August 25, 1990.

42 **Sec. C-3. Compensation.** Legislative members are entitled to
44 receive the legislative per diem as defined in the Maine Revised
46 Statutes, Title 3, section 2, for each day's attendance at the
48 commission meetings. All other members, except state employees,
are not entitled to compensation, but may be reimbursed for
reasonable expenses as provided in Title 5, section 12002-A,
subsection 1.

50 **Sec. C-4. Staff support.** The Administrative Office of the
52 Courts may furnish clerical and other support services to the
commission.

2 **Sec. C-5. Duties.** The commission shall study the future of
the court system in Maine and make recommendations as necessary
4 to ensure that the judicial needs of Maine citizens will be met
in the 21st century. The commission shall examine, but not limit
6 its examination to, the following issues:

8 1. Integration of the jurisdictions of the various court
systems, including the feasibility, cost, and method of creating
10 a unified trial court system in Maine;

12 2. Expansion of the availability and use of alternative
dispute resolution mechanisms. This includes the consideration
14 of ways to increase the use of referees under Rule 53 of the
Maine Rules of Civil Procedure, including, but not limited to,
16 rule changes, the education of lawyers and judges, mandatory use
of referees, the development of guidelines for the use of
18 referees, and other ways to encourage the use of referees;

20 3. Parity among judicial salaries within the court system;

22 4. Further evolution of the Probate Court system,
particularly the conflict-of-interest issue concerning part-time
24 Probate Court Judges, considering, as a possibility, establishing
full-time Judges of Probate who travel a circuit;

26 5. Any recommendations of the Court Mediation Service on
expanding mediation services; and
28

30 6. An evaluation of any pilot project establishing the
Family and Administrative Law Division of the District Court in
32 the Ninth District.

34 **Sec. C-6. Report to Legislature.** The commission, by November
15, 1991, shall report to the Joint Standing Committee on
36 Judiciary the results of its findings and recommendations
together with any necessary implementing legislation.

38 **Sec. C-7. Funding.** The commission is authorized to receive
40 funds from any source, governmental or private.

42 **Sec. C-8. Appropriation.** The following funds are appropriated
from the General Fund to carry out the purposes of this Part.
44

1990-91

46

JUDICIAL DEPARTMENT

48

**Commission to Study the
50 Future of Maine's Courts**

2	Personal Services	\$3,300
	All Other	12,950
4	Provides funds for per diem, travel and	
6	related expenses of the Commission to Study	
8	the Future of Maine's Courts. These funds	
	may not lapse, but must be carried forward	
	to June 30, 1992.	

10 **JUDICIAL DEPARTMENT**
TOTAL \$16,250

12 **STATEMENT OF FACT**

14 This bill contains the legislation necessary to implement
16 the recommendations of the court jurisdiction study conducted by
18 a subcommittee of the Joint Standing Committee on the Judiciary,
20 as authorized by the Legislative Council. Not all of the
recommendations received the unanimous approval of the
subcommittee.

22 Part A of this bill:

24 1. Adds the chairs of the Joint Standing Committee on
Judiciary, or their designees, to the Judicial Council;

26 2. Amends the statutory provisions prohibiting a waiver of
28 court appearance for a 2nd traffic citation in any 12-month
period to allow 2 waivers within a 12-month period;

30 3. Adds 2 computer specialists and a District Court Judge
32 to the Judicial Department; and

34 4. Integrates the Administrative Court into the District
36 Court system by transferring the jurisdiction, authority and
38 personnel of the Administrative Court to the District Court.
This bill should be amended to delete all Administrative Court
references throughout the statutes.

40 Part B of this bill establishes the Commission on the
42 Criminal Penalties in the Maine Revised Statutes to examine the
consistency of criminal penalties outside the Maine Criminal Code
with the penalties within the Maine Criminal Code.

44 Part C of this bill establishes the Commission to Study the
46 Future of Maine's Courts to conduct a broad-based study of the
future of Maine's court system.

48