

# MAINE STATE LEGISLATURE

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M  
R. G. S.

L.D. 2487

DATE: 3-8-00

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JUDICIARY

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
119TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1776, L.D. 2487, Bill, "An Act to Amend the Jurisdiction of the District Court"

Amend the bill by inserting after the title and before the enacting clause the following:

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

**Whereas,** the Administrative Court's jurisdiction will be absorbed by the District Court on March 15, 2001; and

**Whereas,** there is a vacancy in the Administrative Court that can be eliminated immediately while creating a new position in the District Court; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, '

Further amend the bill by inserting after the enacting clause the following:

**PART A**

**Sec. A-1.** 4 MRSA §152, sub-§5, ¶O, as enacted by PL 1989, c. 392, §1, is amended to read:

O. Actions in which the pleading demands a judgment:

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- (1) To exclude a person from a vested or contingent interest in or lien upon specific property within the State;
- (2) That a vested or contingent interest in or lien upon specific property within the State be enforced; or
- (2-A) That real property be partitioned by sale; or
- (3) Otherwise affecting title to any real property;

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**Sec. A-2. 4 MRSA §157, sub-§1, ¶A**, as amended by PL 1999, c. 510, §1, is further amended to read:

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A. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and to confirmation by the Legislature, shall appoint to the District Court ~~31~~ 32 judges. At least one judge must be appointed from each district who is a resident of a county in which the district lies, except that in District 3 there must be 2 judges appointed who are residents of a county in which the district lies; in District 6 there must be 2 judges appointed who are residents of a county in which the district lies; and in District 9 there must be 2 judges appointed who are residents of a county in which the district lies. Each District Court Judge has a term of office of 7 years.

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To be eligible for appointment as a District Judge, a person must be a member of the bar of the State. The term "District Judge" includes the Chief Judge and Deputy Chief Judge.

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**Sec. A-3. 4 MRSA §1151**, as amended by PL 1997, c. 643, Pt. M, §11, is further amended to read:

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**§1151. Administrative Court**

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1. **Establishment.** The Administrative Court, as heretofore established, shall be part of the Judicial Department of the State and subject to the authority of the Chief Justice of the Supreme Judicial Court. The Administrative Court shall consist of the Administrative Court Judge ~~and an Associate Administrative Court Judge. In the event of the disability of the Administrative Court Judge, an Associate Administrative Court Judge shall perform any and all of his duties.~~ The Administrative Court shall be a court of record. The Administrative Court Judge shall establish a seal. Except as otherwise provided in this chapter, the Administrative Court Judge shall ~~be~~ is responsible for the

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efficient operation of the Administrative Court and for the proper conduct of business therein.

2. Licensing jurisdiction. Except as provided in Title 5, section 10004; Title 8, section 279-B; Title 10, section 8003, subsection 5; Title 20-A, sections 10712 and 10713; Title 29-A; Title 32, chapters 105 and 114; and Title 35-A, section 3132, the Administrative 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 Administrative Court has original concurrent jurisdiction to grant equitable relief in proceedings initiated by an agency or the Department of the Attorney General alleging any violation of a license or licensing laws or rules.

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

2-A. Appellate jurisdiction. The Administrative Court shall--have 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, shall--govern governs this procedure as far as applicable, substituting "Administrative Court" for "Superior Court."

3. Administrative structure. The Administrative Court shall have has the following structure.

A. The Administrative Court Judge and--Associate--Judges shall--be is appointed by the Governor, subject to review of the Joint Standing Committee on Judiciary and to confirmation by the Legislature. ~~Each shall hold~~ The term of office for a term of is 7 years and until a successor has been appointed and confirmed.

B. The Administrative Court Judge and--the--Associate Administrative--Court--Judges--shall--be--members must be a member of the bar in this State. ~~Each~~ The Administrative Court Judge shall devote full time to his judicial duties, shall may not practice law during his the term of office, nor ~~shall he during such term~~ be the partner or associate of any person in the practice of law during the term of office.

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2 C. The Administrative Court Judge shall ~~receive~~ receives as  
annual compensation an amount which is the same as the Chief  
4 Judge of the District Court. ~~He shall be~~ The Administrative  
Court Judge is entitled to actual and necessary expenses in  
6 the performance of his judicial duties. He The  
Administrative Court Judge may employ necessary clerical  
8 assistance for the court. An Associate Administrative Court  
Judge shall receive as annual compensation an amount which  
10 is the same as a District Court Judge and he shall be  
entitled to actual and necessary expenses in the performance  
12 of his duties.

14 D. On receipt of a written complaint from an agency or the  
Attorney General, ~~a Judge of~~ the Administrative Court Judge  
16 shall conduct a hearing on the applicable facts and law. The  
judge may subpoena and examine witnesses.

18 E. Whenever the Administrative Court Judge determines that  
he the judge has a personal interest or a financial  
20 interest, directly or indirectly, in a case which is before  
him the Administrative Court, ~~he shall disqualify himself~~  
22 the judge is disqualified from hearing an that individual  
case and the judge shall give written notice of the  
24 disqualification to the parties to the action and shall file  
a copy of the notice in the docket of the case. He shall  
26 assign the case to an Associate Administrative Court Judge.

28 ~~Whenever an Associate Administrative Court Judge determines~~  
~~that he has a personal interest or a financial interest,~~  
30 ~~directly or indirectly, in a case which is before him, he~~  
~~shall disqualify himself and give written notice to the~~  
32 ~~Administrative Court Judge.~~

34 ~~Whenever all judges of the Administrative Court have~~  
~~disqualified themselves in a case, the Administrative Court~~  
36 ~~Judge shall give written notice of same to the parties to~~  
~~the action and shall file a copy of the notice in the docket~~  
38 ~~of the case.~~

40 The moving party shall, within 10 days thereafter, commence  
an action by filing or refileing his the complaint in the  
42 District Court. Jurisdiction is granted to the District  
Court to hear and determine such matters and to enter such  
44 rulings and orders as the nature of the case may require.  
The case shall must be heard in the District Court in  
46 accordance with procedures governing the Administrative  
Court. The court reporter from the Administrative Court  
48 shall transcribe the testimony as in cases before a judge of  
the Administrative Court. An aggrieved party may appeal from  
50 the decision of the District Court Judge to the Superior

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2 Court in the same manner as from a decision of the  
Administrative Court.

4 F. Chapters 27 and 29, providing for compensation upon  
6 retirement of Justices of the Superior Court and to benefits  
8 for their spouses and surviving minor children or other  
10 beneficiaries, is made applicable to the Administrative  
12 Court Judge and Associate Administrative Court Judges. The  
years in which the Administrative Court Judge served in the  
capacity of Administrative Hearing Commissioner during 1963  
to 1973 shall be are included as creditable service without  
additional contribution.

14 G. As head of the Judicial Department, the Chief Justice of  
16 the Supreme Judicial Court shall approve the Administrative  
Court Judge's determination of the Administrative Court's  
18 budget and procedures for scheduling cases.

20 H. Any Administrative Court Judge who retires or terminates  
22 service on the court in accordance with chapter 27, except  
24 for a disability retirement, is eligible for appointment as  
26 an Active Retired Judge of the Administrative Court as  
28 provided. The Governor, subject to review by the joint  
30 standing committee of the Legislature having jurisdiction  
32 over judiciary and to confirmation by the Legislature, may  
34 appoint any eligible judge to be an Active Retired Judge of  
36 the Administrative Court for a period of 7 years, unless  
38 sooner removed. That judge may be reappointed for a like  
40 term. Any judge appointed constitutes a part of the court  
42 from which that judge has retired and has the same  
44 jurisdiction and is subject to the same restrictions as  
before retirement, except the judge may act only in those  
cases and matters and hold court only at those sessions and  
times as directed and assigned by the Administrative Court  
Judge or by the Chief Justice of the Supreme Judicial  
Court. An Active Retired Judge of the Administrative Court,  
who performs judicial service at the direction and  
assignment of the Administrative Court Judge or the Chief  
Justice of the Supreme Judicial Court, is compensated for  
those services at the rate of \$200 a day or \$125 for 1/2  
day, provided that the total per day compensation and  
retirement pension received by an Active Retired Judge of  
the Administrative Court in any calendar year does not  
exceed the annual salary of the Associate Judge of the  
Administrative Court.

46 Sec. A-4. 33 MRSA §153 is repealed and the following enacted  
48 in its place:

50 §153. Sale or mortgage of estates subject to contingent

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remainders

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4 1. Sale or mortgage. When real estate is subject to a  
6 contingent remainder, executory devise or power of appointment,  
8 the Superior Court, the District Court or the Probate Court for  
10 the county or district in which the real estate is situated may,  
upon the petition of any person who has an estate in possession  
in the real estate and after notice and other proceedings as  
required, appoint one or more trustees and authorize the trustee  
or trustees:

12 A. To sell and convey the estate or any part of the estate  
14 in fee simple, if such a sale and conveyance appears to the  
court to be necessary or expedient; or

16 B. To mortgage the estate, either with or without power of  
18 sale, for such an amount, on such terms and for such  
purposes as may seem to the court judicious or expedient.

20 The conveyance or mortgage is valid and binding upon all parties.

22 2. Petition. The petition must set forth the nature of the  
24 petitioner's title to the real estate, the source from which the  
26 title was derived, the names and addresses of all persons known  
to be interested in the real estate and any other facts necessary  
for a full understanding of the matter.

28 **PART B'**

30 Further amend the bill by striking out all of section 5.

32 Further amend the bill in section 11 in that part designated  
34 "~~§184.~~" in subsection 6 in the 9th line (page 5, line 32 in L.D.)  
by striking out the following: "a hearing" and inserting in its  
36 place the following: 'an expedited hearing'

38 Further amend the bill in section 11 in that part designated  
"~~§184.~~" in subsection 6 in the 9th to 11th lines (page 5, lines  
40 32 to 34 in L.D.) by striking out the following: "which  
hearing must take precedence over all other matters except older  
matters of the same character on the docket of the court"

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44 Further amend the bill in section 39 in subsection 2 in the  
last 2 lines (page 16, lines 38 and 39 in L.D.) by striking out  
46 the following: "~~when-assigned-under-Title-4,-section-157-C~~" and  
inserting in its place the following: 'when assigned under Title  
4, section 157-C'

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50 Further amend the bill by striking out all of section 77.

Further amend the bill in section 79 by striking out all of subsection 2 and inserting in its place the following:

'2. Any positions authorized and allocated, subject to the personnel laws, to the Administrative Court are transferred to the District Court and may continue to be authorized.'

Further amend the bill by inserting after section 80 the following:

'Sec. 81. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2000-01

**JUDICIAL DEPARTMENT**

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

Personal Services (\$1,000)

Deappropriates funds from savings from stipends that will no longer be paid due to the elimination of one Administrative Court Chief Judge position and one Administrative Court Associate Judge position and the establishment of 2 District Court Judge positions.

**Sec. 82. Effective date.** This Part takes effect March 15, 2001.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.'

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

Further amend the bill by inserting at the end before the summary the following:

**FISCAL NOTE**

2000-01

H. S.

2 **APPROPRIATIONS/ALLOCATIONS**

4 General Fund (\$1,000)

6 This bill includes a General Fund deappropriation of \$1,000  
8 in fiscal year 2000-01 from savings from stipends that will no  
10 longer be paid due to the elimination of one Administrative Court  
12 Chief Judge position and one Administrative Court Associate Judge  
14 position and the establishment of 2 District Court Judge  
16 positions effective March 15, 2001. The annual savings are  
18 estimated to be \$4,000 beginning in fiscal year 2001-02.'

14 **SUMMARY**

16 This amendment adds an emergency preamble and clause to the  
18 bill, divides the bill into 2 parts and makes the provisions  
20 contained in Part A effective immediately and the provisions  
22 contained in Part B effective March 15, 2001.

24 Part A contains the changes necessary to give the District  
26 Court the equitable power to partition property by sale, which  
28 were included in the original bill.

30 Part A also contains a new provision that eliminates the  
32 Administrative Court Associate Judge immediately. The position  
34 is currently vacant. A District Court Judge position is created  
36 immediately, so there is no net loss of judicial resources.

38 Part B contains the rest of the bill as originally printed,  
40 with the following changes.

42 1. This amendment clarifies that an expedited hearing on  
44 the emergency suspension or revocation of a license must be  
46 scheduled, but that such hearings do not take precedence over any  
48 other items on the District Court's docket.

50 2. This amendment retains current law that was  
inadvertently struck in the original bill.

3. This amendment replaces part of the transition section  
to clearly state that all the positions associated with the  
Administrative Court become part of the District Court. The  
position of Administrative Court Chief Judge is eliminated March  
15, 2001 and a new District Court Judge position is created  
effective that date. There is no loss in total judge positions.  
The 2 new District Court positions must be filled in the usual  
way: by nomination by the Governor and confirmation by the  
Legislature.

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This amendment also adds a fiscal note to the bill.

**COMMITTEE AMENDMENT**