

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1415

S.P. 493

March 15, 2007

**An Act Regarding the Right of a Person To Appeal from the Action
of a State Agency**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator DAMON of Hancock.

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

2 **Sec. 1. 5 MRSA §11001, sub-§1**, as amended by PL 1979, c. 127, §40, is further
3 amended to read:

4 **1. Agency action.** Except where a statute provides for direct review or review of a
5 pro forma judicial decree by the Supreme Judicial Court or where judicial review is
6 specifically precluded or the issues therein limited by statute, any person who is
7 aggrieved by final agency action ~~shall be or any preliminary, procedural, intermediate or~~
8 other nonfinal agency action is entitled to judicial review thereof in the Superior Court in
9 the manner provided by this subchapter. ~~Preliminary, procedural, intermediate or other~~
10 nonfinal agency action shall be independently reviewable only if review of the final
11 agency action would not provide an adequate remedy.

12 **Sec. 2. 38 MRSA §341-D, sub-§5**, as amended by PL 1993, c. 356, §1, is further
13 amended to read:

14 **5. Requests for reconsideration.** A person aggrieved by a decision of the board on
15 a permit or license application may petition the board once to reconsider that decision,
16 except that a person may not petition the board to reconsider a decision that is an appeal
17 or review of a final license or permit decision made by the commissioner under
18 subsection 4, paragraph A. A petition for reconsideration must be made in writing within
19 30 days after the board's decision and may be made for:

- 20 A. Correction of any part of the decision that the petitioner believes to be in error
21 and not intended by the board;
- 22 B. An opportunity to present new or additional evidence to secure reconsideration
23 of any part of the decision; or
- 24 C. A challenge to any fact of which official notice was taken.

25 The petition must set forth in detail the findings, conclusions or conditions to which the
26 petitioner objects, the basis of the objections, the nature of any new or additional
27 evidence to be offered and the nature of the relief requested. Within 30 days of receiving
28 a complete reconsideration petition, the board shall decide whether to reconsider its
29 decision. The board may hold a hearing within 30 days of its decision to reconsider the
30 decision.

31 In considering the petition, the board may grant the petition in full or in part, or dismiss
32 the petition. The board shall provide reasonable notice to interested persons. A decision
33 by the board to dismiss a petition submitted under this subsection must be accompanied
34 by written findings of fact and an order that may be appealed by the petitioner to the
35 Superior Court as a decision or order of the board as described in section 346.

36 The board may allow the record to be supplemented when it finds that the evidence
37 offered is relevant and material and that an interested party seeking to supplement the
38 record has shown due diligence in bringing the evidence to the licensing process at the
39 earliest possible time or the evidence is newly discovered and could not, by the exercise
40 of diligence, have been discovered in time to be presented earlier in the licensing process.

1 The running of the time for appeal under section 346, subsection 1, is terminated by a
2 timely petition for reconsideration filed under this subsection. The full time for appeal
3 commences and is computed from the date of the final board action dismissing the
4 petition or another final board action as a result of the petition.

5 The filing of a petition for reconsideration is not an administrative or judicial prerequisite
6 for the filing of an appeal under section 346, subsection 1.

7

SUMMARY

8 This bill provides that a person who is aggrieved by any preliminary, procedural,
9 intermediate or other nonfinal action of a state agency is entitled to judicial review of that
10 action in the Superior Court. It also provides that a decision by the Board of
11 Environmental Protection to dismiss a petition submitted under the Maine Revised
12 Statutes, Title 38, section 341-D, subsection 5 must be accompanied by written findings
13 of fact and an order that may be appealed by the petitioner to the Superior Court.