

MAINE STATE LEGISLATURE

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EMERGENCY
SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2145

H. P. 2107

House of Representatives, February 14, 1978

Referred to the Committee on State Government. Sent up for concurrence.

EDWIN H. PERT, Clerk

Presented by Mrs. Kany of Waterville.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

AN ACT to Conform State Statutes to the Maine Administrative Procedure Act.

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

Whereas, the 90-day period may not elapse until after July 1, 1978; and

Whereas, the Maine Administrative Procedure Act is scheduled to become effective on July 1, 1978; and

Whereas, unless state statutes are conformed to the Maine Administrative Procedure Act, effective implementation and application of that Act will not be possible; and

Whereas, it is therefore essential that these state statutes be conformed to the Maine Administrative Procedure Act at the time it goes into effect; 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,

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

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Sec. 683. 36 MRSA § 292, 4th ¶ from the end, first sentence, as last repealed and replaced by PL 1975, c. 765, § 4, is amended to read:

Any party aggrieved by the decision of the board may appeal pursuant to the Maine ~~Rules of Civil Procedure, Rule 80B~~ Administrative Procedure Act.

Sec. 684. 36 MRSA § 576, next to the last ¶, as last amended by PL 1977, c. 549, § 4, is further amended to read:

The State Tax Assessor shall hold one or more public hearings, ~~with such reasonable notice to the public as he shall determine~~ upon the foregoing matters to be determined, shall provide for a transcript thereof, and shall ~~issue an order a rule or orders~~ rules stating said determinations on or before October 1, 1978 and on or before October 1st biennially thereafter. ~~The State Tax Assessor shall give public notice of such orders by certifying a copy of such orders to the Secretary of State and in such other manner as he determines reasonable.~~

Sec. 685. 36 MRSA § 576, last ¶, as amended by PL 1977, c. 509, § 5, is further amended to read:

The State Tax Assessor shall ~~place such orders on file in the Bureau of Taxation and shall~~ certify and transmit such ~~orders~~ rules to the municipal assessors of each municipality with respect to forest land therein on or before April 1st of each year.

Sec. 686. 36 MRSA § 576-B, first ¶, first sentence, as enacted by PL 1977, c. 549, § 5, is amended to read:

By February 1, 1978 and every 4th year thereafter, the State Tax Assessor shall determine and prescribe by rule the percentage factor by which the growth rates set by him pursuant to section 576 shall be reduced to reflect the growth which can be extracted on a sustained basis.

Sec. 687. 36 MRSA § 576-B, first ¶, 2nd sentence, as enacted by PL 1977, c. 549, § 5, is repealed.

Sec. 688. 36 MRSA § 576-B, 2nd ¶, first sentence, as enacted by PL 1977, c. 549, § 5, is amended to read:

By February 1st of each even-numbered year, the State Tax Assessor shall determine and prescribe by rule the capitalization rate which shall be applied to the value of the annual net wood production pursuant to section 576.

Sec. 689. 36 MRSA § 576-B, 2nd ¶, 2nd sentence, as enacted by PL 1977, c. 549, § 5, is repealed.

Sec. 690. 36 MRSA § 576-B, 3rd ¶, last sentence, as enacted by PL 1977, c. 549, § 5, is amended to read:

~~These hearings shall be held with reasonable notice to the public and a~~ A transcript shall be made of the proceedings.

Sec. 691. 36 MRSA § 576-B, last ¶, as enacted by PL 1977, c. 549, § 5, is amended to read:

Any person aggrieved by a determination of the State Tax Assessor under this section may appeal ~~it according to the procedures established in section 582 in~~ accordance with the Maine Administrative Procedure Act. A person aggrieved hereunder shall be any person with a legal interest in the land subject to the determination, any municipality in which the land subject to the determination lies and the Attorney General, upon the written petition of 10 residents of the State, if he sees fit to intervene or appeal, in which event the Attorney General shall be authorized to employ independent counsel to represent the petitioners if he deems it appropriate to do so.

Sec. 692. 36 MRSA § 582, as amended by PL 1973, c. 308, §§ 14, 15, 16 and 17, is repealed.

Sec. 693. 36 MRSA § 583, as last amended by PL 1977, c. 509, §§ 10, 11 and 12 and c. 549, §§ 6 and 7, is repealed and the following enacted in its place:

§ 583. Abatement

Assessments made under this subchapter are subject to the abatement procedures provided by section 841, except that appeal under section 843 from abatement decisions shall be to the Land Classification Appeals Board rather than to either a local board of assessment review or the State Board of Assessment Review.

Sec. 694. 36 MRSA § 841, sub-§ 1, last ¶, as enacted by PL 1977, c. 509, § 16, is amended to read:

Appeals from the decision of the assessor or assessors shall be taken in accordance with sections 843, subsection 1, and ~~844 and 845~~.

Sec. 695. 36 MRSA § 841, sub-§ 2, first ¶, last sentence, as enacted by PL 1977, c. 509, § 16, is amended to read:

Appeals from the decision of the chief assessor shall be taken in accordance with ~~sections~~ section 843, subsection 2 and ~~845~~.

Sec. 696. 36 MRSA § 841, sub-§ 2, first ¶, as enacted by PL 1977, c. 509, § 16, is amended by adding at the end the following new sentence:

The decision shall not be deemed "final agency action" under the Maine Administrative Procedure Act.

Sec. 697. 36 MRSA § 841, sub-§ 3, last ¶, as enacted by PL 1977, c. 509, § 16, is amended to read:

Appeals from the decision of the State Tax Assessor shall be taken in accordance with ~~sections~~ section 843, subsection 2 ~~and 845~~. The decision shall not be deemed "final agency action" under the Maine Administrative Procedure Act.

Sec. 698. 36 MRSA § 841, sub-§ 5, last ¶, as enacted by PL 1977, c. 509, § 16, is amended to read:

Appeals from the decisions of the municipal officers shall be taken in accordance with section 843, subsection 2 ~~and section 845~~.

Sec. 699. 36 MRSA § 843, sub-§ 2, 2nd sentence, as repealed and replaced by PL 1977, c. 509, § 18, is repealed and the following enacted in its place:

The decision of the State Board of Assessment Review shall be deemed final agency action by that board under the Maine Administrative Procedure Act.

Sec. 700. 36 MRSA § 845, as amended by PL 1977, c. 509, § 20, is repealed.

Sec. 701. 36 MRSA § 846, as amended by PL 1973, c. 645, § 8, is repealed.

Sec. 702. 36 MRSA § 847 is repealed.

Sec. 703. 36 MRSA § 848, as last amended by PL 1977, c. 509, § 21, is repealed.

Sec. 704. 36 MRSA § 849, first, 2nd, 3rd and 5th ¶¶'s, as repealed and replaced by PL 1977, c. 509, § 23, are repealed.

Sec. 705. 36 MRSA § 1118, as amended by PL 1977, c. 549, § 9, is repealed and the following enacted in its place:

§ 1118. Abatement

Assessments made under this subchapter are subject to the abatement procedures provided by section 841, except that appeal under section 843 from abatement decisions shall be to the Land Classification Appeals Board rather than to either a local board of assessment review or the State Board of Assessment Review.

Sec. 706. 36 MRSA § 1754, next to the last ¶ is amended by adding at the end the following new sentence to read:

A registration certificate shall not be deemed to be a "license" within the meaning of the term in the Maine Administrative Procedure Act.

Sec. 707. 36 MRSA § 1754, last ¶ last sentence is amended to read:

In case of a vendor who has no fixed place of business and does not sell from a vehicle, the application for ~~license~~ **license sellers certificate** shall nevertheless set forth a place to which any notice or other communication authorized by chapters 211 to 225 may be sent.

3. **Modification, revocation or suspension of licenses.** After written notice to the licensee and opportunity for a hearing, the board may modify in whole or in part any license or issue an order prescribing necessary corrective action or, with or without hearing, may initiate proceedings in the Administrative Court to revoke or suspend a license, whenever the board finds:

Sec. 767. P&SL 1941, c. 69, § 4, (a), (3) is amended to read:

(3) to adopt from time to time and amend by-laws covering its procedure, rules and regulations governing use of the turnpike and any of the other services made available in connection with said turnpike ~~to publish the same as such publication is necessary or advisable and to cause records of its proceedings to be kept in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 1;~~

Sec. 768. **Appropriation.** The following funds shall be appropriated from the General Fund to carry out the purposes of this Act:

	1977-78	1978-79
PUBLIC UTILITIES COMMISSION		
Personal Services	(3) \$ 9,200	\$37,372
All Other	2,000	8,000
Capital Expenditures	860	—
Total	\$12,060	\$45,372

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect on July 1, 1978, except that section 768 shall take effect when approved.

STATEMENT OF FACT

Except as mentioned below, the purpose of this bill is to conform the state statutes to the Maine Administrative Procedure Act, which was adopted in the first regular session of the 108th Legislature. The Maine Administrative Procedures Act applies generally to all agencies of State Government.

Included in the bill are several suggested amendments to the Maine Administrative Procedure Act itself.

1. Sections 4, 37 and 39 contain amendments which empower the Administrative Court to hear cases brought by an agency that wishes to refuse renewal of an existing license, 4 and 39, and give agencies an option in that situation to conduct its own hearing or proceed in the Administrative Court, 37. Refusals to renew a license usually occur for the same reasons as a revocation or suspension, which must be done in the court.

Section 39 also adds language to the section in Title 5 describing the Administrative Court's jurisdiction to make it consistent with the jurisdictional provision now contained in Title 4, section 1151.

2. Section 4 also limits the power of licensing agencies to reinstate a license revoked, suspended or modified by the Administrative Court pursuant to action by the Attorney General, without the approval of the Attorney General.

3. Sections 5 and 11 provide direct review of Administrative Court decisions in the Supreme Judicial Court sitting as the law court, rather than have an intermediate appeal to the Superior Court.

4. Section 6, 7, 8 and 9 remove remaining references to a "contested" case in the Administrative Court, which was a defined term under the former Administrative Code, not carried forward into the Maine Administrative Procedure Act.

5. Section 10 corrects an oversight: The requirement that application be made to the Superior Court for enforcement of an Administrative Court subpoena was included in earlier drafts of the Maine Administrative Procedure Act when the court was not a part of the judicial branch.

6. Sections 30 and 32 clarify the definition of "rule" by limiting the scope of the word "sanction" to those available in a court of law.

7. Section 31 clarifies the fact that internal management policies are not "rules," whether interagency or intra-agency in application.

8. Section 33 assures that the provisions of the Maine Administrative Procedure Act will prevail over any inconsistent provisions of other statutes, unless the statutes specifically provides otherwise.

9. Section 34 provides that matters subject to the Maine Administrative Procedure Act and pending in an agency on the effective date of the Maine Administrative Procedure Act will be concluded under the laws in effect when they were begun.

10. Section 35 requires agencies to readopt rules made prior to the effective date of the Maine Administrative Procedure Act if public notice and an opportunity for a hearing were not provided.

11. Section 36 substantially reduces the penalty for violating an agency subpoena and makes it identical to the penalty for violating a court subpoena.

12. Section 38 expands the circumstances under which agencies may revoke, suspend or refuse to renew a license, including general authorizations to act when the health or physical safety of any person is immediately threatened and when