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:
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:

<table>
<thead>
<tr>
<th></th>
<th>1977-78</th>
<th>1978-79</th>
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<tbody>
<tr>
<td>PUBLIC UTILITIES COMMISSION</td>
<td></td>
<td></td>
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<tr>
<td>Personal Services</td>
<td>(3) $9,200</td>
<td>$37,372</td>
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<tr>
<td>All Other</td>
<td>2,000</td>
<td>8,000</td>
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<tr>
<td>Capital Expenditures</td>
<td>860</td>
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<td>Total</td>
<td>$12,060</td>
<td>$45,372</td>
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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
the action is based upon a physical test, examination or inspection by a state-certified inspector.

13. Section 40 limits the circumstances when judicial review of final agency decisions will be unavailable to those where a statute has specifically precluded such review or specifically limited the issues reviewable.