

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES (Filing No. H-1146)  
108TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " A " to H.P. 2107, L.D. 2145, Bill,  
"AN ACT to Conform State Statutes to the Maine Administrative  
Procedure Act."

Amend the Bill by striking out everything after the title  
and before the enacting clause.

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

'Sec. 1. 4 MRSA §8, 1st sentence, is amended to read:

The Supreme Judicial Court shall have the power to pre-  
scribe, by general rules, for the Administrative, District and  
Superior Courts of Maine, the forms of process, writs, pleadings  
and motions, and the practice and procedure in civil actions at  
law.'

Further amend the Bill in section 4 in the 4th line (3rd  
and 4th lines in L.D.) by striking out the following: "and  
Title 29, chapter 17," and inserting in its place the following:  
'and, Title 29, chapter 17 and Title 35, section 1566,'

Further amend the Bill by striking out all of section 5

Further amend the Bill by striking out all of section 11 and  
inserting in its place the following:

'Sec. 11. 4 MRSA §1157, as enacted by PL 1977, c. 551, §1,  
is amended by adding at the end a new sentence to read:  
The resulting Superior Court decision may be appealed by any  
party thereto, in the same manner as in other civil cases, to the  
Supreme Judicial Court sitting as the law court.'

Further amend the bill by striking out all of section 13 and inserting in its place the following:

'Sec. 13. 5 MRSA §593, as last amended by PL 1977, c. 427, is further amended by adding at the end a new paragraph to read:

A hearing before the State Personnel Board is an adjudicatory proceeding under the Maine Administrative Procedure Act, chapter 375, and shall be held in accordance with subchapter IV, section 9051, et seq.'

Further amend the Bill by inserting after section 29 the following:

'Sec. 29-A. 5 MRSA §8001, as enacted by PL 1977, c. 551, §3, is amended to read:

§8001. Short title

This chapter and Title 4, chapter 25 shall be known and may be cited as the "Maine Administrative Procedure Act."

Sec. 29-B. 5 MRSA §8002, 1st ¶, as enacted by PL 1977, c. 551, §3, is amended to read:

As used in this chapter Act, unless the context otherwise indicates, the following words and phrases shall have the following meanings.'

Further amend the Bill in section 30 by striking out all of paragraph A and inserting in its place the following:

'A. "Rule" means the whole or any part of every regulation, standard, code, statement of policy, or other agency statement of general applicability, including the amendment, suspension or repeal of any prior rule, that ~~has-the-force of-law-or-the-violation-of-which-may-result-in-the-imposition of-sanctions,~~ is or is intended to be judicially enforceable and implements, interprets or makes specific the law

Statement of Fact

The purposes of this amendment are to:

1. Delete the emergency preamble;
2. Add a new Section A to make / <sup>clear</sup> that the Supreme Judicial Court shall have the power to prescribe rules of procedure for the Administrative Court;
3. Amend sections 4 and 39 and establish new sections 681-A and 681-B to remove from the jurisdiction of the Administrative Court cases involving suspension of vehicle permits issued by the Public Utilities Commission. These permits are suspended by the Commission because of such reasons as failure to file insurance, because of safety violation and failure to designate an agent for service of process. It is estimated that failure to enact this legislation will result in at least 300 to 600 additional cases annually before the Administrative Court;
4. Delete section 5 in order to retain original jurisdiction in the District Court when both Administrative Court Judges disqualify themselves;
5. Clarify in section 11 the Administrative Procedure Act by providing a final appeal to the Maine Supreme Court from license revocation or suspension decisions. The same appeal rights already exist in the Act from decisions made by the agencies;
6. <sup>clear</sup> Make / in section 13 that hearings before the State Personnel Board are adjudicatory proceedings under the APA;

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7. Add sections 29-A and 29-B to make / <sup>clear</sup> that the Administrative Procedure Act includes the provisions in Title 4 relating to the Administrative Court, and that the definitions in section 8002 apply throughout the Act;

8. Amend sections 30-32 to clarify the ~~definition of the term~~ "rule" and remove the terms "force of law," "sanctions," and "rights of or proceedings available to any person" from the definition, each of which suffers some inherent ambiguity. These concepts are replaced with the concept of judicial enforceability. If an agency promulgates a statement of general applicability, which is intended to be legally binding, it will expect the statement to be capable of enforcement in the courts. If it meets this test, the statement is a "rule" as defined, and the Administrative Procedure Act requirements for rulemaking apply to its promulgation and publication. By contrast, a statement which is intended only to operate as a guideline, a format or a suggestion for the agency or for those persons to whom it applies, and not intended to be legally binding will not be a "rule" as defined, because the agency will not expect that adherence to it will be judicially enforceable;

9. Make / <sup>clear</sup> in section 34 that the APA shall not affect rules negotiated or a part of any collective bargaining agreement being negotiated on the effective date of the APA;

10. Add a new section 34-A, which increases the number of persons needed to require a public hearing on rules prepared by an agency;