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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY

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