

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1354

H.P. 922

House of Representatives, April 21, 2015

An Act To Improve the Maine Administrative Procedure Act

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative FREDETTE of Newport. (GOVERNOR'S BILL)

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

2 **Sec. 1. 5 MRSA §8052, sub-§7**, as amended by PL 1995, c. 373, §3, is repealed
3 and the following enacted in its place:

4 **7. Adoption of rule.** A rule may not take effect unless the agency adopts it within
5 120 days of the final date by which data, views or arguments may be submitted to the
6 agency for consideration in adopting the rule.

7 **Sec. 2. 5 MRSA §8052, sub-§9** is enacted to read:

8 **9. Adoption of a rule expected to result in taking of private property.** An agency
9 may not adopt a rule if it is reasonably expected to result in a taking of private property
10 under the Constitution of Maine unless such a result is directed by law or sufficient
11 procedures exist in law or in the proposed rule to allow for a variance designed to avoid
12 such a taking.

13 **Sec. 3. 5 MRSA §8053, sub-§1**, as amended by PL 2011, c. 479, §§1 to 3, is
14 further amended to read:

15 **1. Notice of rulemaking without hearing.** At least 20 days prior to the comment
16 deadline of any rule without hearing, the agency shall deliver or mail written notice or;
17 ~~with written or electronic agreement of the party,~~ provide electronic notice to:

- 18 A. Any person specified by the statute authorizing the rulemaking;
- 19 B. Any person who has filed within the past year a written or electronic request with
20 the agency for notice of rulemaking;
- 21 C. Any trade, industry, professional, interest group or regional publication that the
22 agency considers effective in reaching the persons affected; and
- 23 E. The primary sponsor of the legislation that was enacted and authorized the
24 rulemaking, as long as the legislation was enacted within the previous 2 years.

25 Notification to subscribers under paragraph B must be by mail if requested by the
26 subscriber or, ~~with written or electronically submitted agreement of the subscriber,~~ by
27 electronic notice or otherwise in writing to the last address provided to the agency by that
28 person. Subscribers under paragraph B may request to receive a copy of each proposed
29 rule with the ~~written~~ notice. The agency shall provide the copy at the same time the
30 notice is sent.

31 Written or electronic notice must also be given to the Secretary of State, by the deadline
32 established by the Secretary of State, for publication in accordance with subsection 5.
33 This notice must be in a format approved by the Secretary of State.

34 **Sec. 4. 5 MRSA §8053, sub-§3-A**, as amended by PL 2003, c. 207, §2, is further
35 amended to read:

36 **3-A. Copies of proposed rules available upon request.** At least 20 days prior to
37 hearing on any proposed rule and at least 20 days prior to the comment deadline of any
38 rule without a hearing, the agency shall make copies of the proposed rule available ~~in~~

1 ~~writing or, with agreement of to persons upon request by mail if so specified by the~~
2 ~~requestor, or electronically to persons upon request.~~

3 **Sec. 5. 5 MRSA §8056, sub-§1, ¶A**, as enacted by PL 1977, c. 551, §3, is
4 amended to read:

5 A. Submit the rule to the Attorney General for ~~approval~~ advice as to form and
6 legality;

7 **Sec. 6. 5 MRSA §8056, sub-§1, ¶B**, as amended by PL 1999, c. 261, §1, is
8 further amended to read:

9 B. File the original rule as signed by ~~the Attorney General or an assistant attorney~~
10 ~~general~~ and the authorized representative of the agency, and the statement required by
11 section 8052, subsection 5, with the Secretary of State in a form prescribed by the
12 Secretary of State, which form is susceptible to frequent and easy revision.

13 (1) Through rulemaking, an agency may incorporate by reference all or any part
14 of a code, standard, rule or regulation that has been adopted by an agency of the
15 United States or of this State or by a nationally recognized organization or
16 association.

17 (2) The reference in the agency rules must fully identify the incorporated matter
18 by exact title, edition or version and date of publication.

19 (3) The rules must state where copies of the incorporated matter are available at
20 cost from the agency issuing the rule or where copies are available from the
21 agency of the United States, this State or an organization or association originally
22 issuing that matter.

23 (4) An agency incorporating a matter by reference shall submit a copy of the
24 incorporated matter to the Secretary of State;

25 **Sec. 7. 5 MRSA §8056, sub-§1, ¶B-1** is enacted to read:

26 B-1. Notwithstanding paragraph B, an agency may specify that an incorporated code,
27 standard, rule or regulation also incorporates any subsequently adopted amendment
28 of the incorporated code, standard, rule or regulation. An agency shall provide notice
29 to the Legislature, the Secretary of State and the persons specified in section 8053 of
30 any amendment incorporated pursuant to this paragraph.

31 **Sec. 8. 5 MRSA §8056, sub-§6**, as amended by PL 1995, c. 537, §6, is repealed.

32 **Sec. 9. 5 MRSA §8057, sub-§2**, as amended by PL 1979, c. 425, §10, is further
33 amended to read:

34 **2. Rules not approved.** Rules not approved and filed in the manner prescribed by
35 section 8056, subsection 1, ~~paragraphs A and paragraph B, shall be~~ are void and of no
36 legal effect. Rules in effect prior to July 1, 1978, become void and of no legal effect on
37 December 31, 1979, unless filed with the Secretary of State in accordance with section
38 8056, subsection 1, paragraph B.

1 2. It changes a statutory provision, which previously provided that the Attorney
2 General may not approve a rule if it is reasonably expected to result in a taking of private
3 property except under certain conditions, to provide that an agency may not adopt a rule
4 if it is reasonably expected to result in such a taking;

5 3. It changes notice requirements, which previously provided that notice and copies
6 of proposed rules be provided by mail unless the requestor specified they be provided
7 electronically, to provide that notice and copies of proposed rules be provided
8 electronically unless the requestor specifies they be provided by mail;

9 4. It allows for electronic submission of certain rule-making information;

10 5. It enacts a provision that allows an agency to choose to incorporate by reference
11 subsequent amendments to a code, standard, rule or regulation; and

12 6. This bill also corrects cross-references.