

MAINE STATE LEGISLATURE

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STATE OF MAINE

OFFICE
OF THE
SECRETARY OF STATE

covers
2008

MATTHEW DUNLAP
SECRETARY OF STATE

January 30, 2009

Honorable John E. Baldacci
Governor of Maine
1 State House Station
Augusta, Maine 04333

Dear Governor Baldacci:

Pursuant to 5 M.R.S.A. §8056-A, the Secretary of State is hereby submitting its report on the progress of the Maine Administrative Procedure Act.

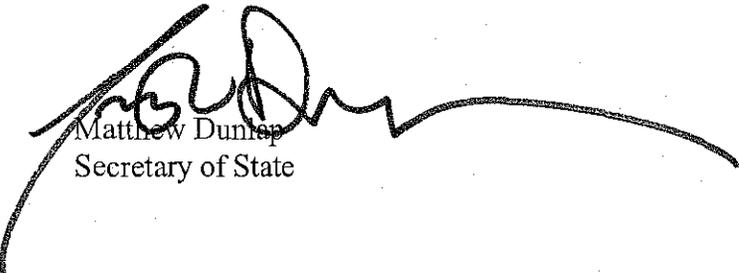
During the year 2008, there were 382 proposed rule filings and 618 adopted rule filings. This represents an increase of 39 proposed rules and an increase of 74 adopted rules from 2007. There are fewer proposals than adoptions because of emergency adoption filings, most of which are Marine Resources closed areas. There were 18 major substantive filings submitted to the Legislature during 2008. This is a decrease of 8 filings from 2007. Additionally, during 2008, the cost of publishing the rule-making notices was \$498,765. This was a decrease of \$12,318 from 2007. This cost was spread among the rule-making agencies *pro rata*. At the end of 2008 there were 1,969 current rule chapters on file with the Secretary of State. This is an increase of 5 from the rule chapters in effect at the end of 2007.

The Secretary of State solicited comments on the progress of the Maine Administrative Procedure Act by publishing a notice in five daily Maine newspapers and on the Internet. We received e-mail comments from, in order received, Stephen J. Martin, John Lyons, Michelle Truman, Jaque Clarke, Bettina Dobbs, Mark Hunkler, and Pat Truman. Copies of these comments are attached.

Direct access to the full text of Maine's rule chapters and regulatory agendas may be found on the Department's website at: www.maine.gov/sos/cec/rules.

If you have any questions regarding the Administrative Procedure Act, please contact me or Julie Flynn, Deputy Secretary of State at 624-7650.

Sincerely yours,



Matthew Dunlap
Secretary of State

u: 2008

January 23, 2009

Dear Mr. Wismer,

I am very concerned about the whole idea that "rules" which have the force of law and that can criminalize people can be made by unelected bureaucrats without any direct oversight by the people's elected representatives, or by the people of Maine.

A few years ago, I fell afoul of one of these "rules" and landed in jail overnight for burning papers in a barrel in my own stone driveway in the early (and wet) spring with no dry tinder within dozens of yards on a drizzly morning while I was standing right next to the barrel.

Government-enforced monopolies that force all citizens to pay for trash removal without any options or avoidance mechanisms made this law particularly onerous, and then finding out later that the judge who dismissed the charges agreed with me that it was disgusting that this was even a criminal offense to begin with made it even more so.

This is just one example of literally hundreds of "Regulatory" laws that CONSTITUTIONALLY have no business ensnaring the people of Maine. I would argue that ALL so-called "Regulatory" or "Agency" law has no legitimate standing under either the U.S. or Maine State Constitutions and ought to be considered null and void, and repealed. In my opinion, if the legislature does not have time to introduce and fully consider all laws affecting the people of Maine, then they have no business being brought into force under any guise, even as currently is done under color of "Regulatory" or "Agency" law. In other words, I don't think a few less laws would hurt anyone's feelings, except perhaps for a few agency bureaucrats.

I am sorry if that effects you personally, but it is simply time that we give control of this state back to the people.

I will be including your response in my communications with the entire Republican delegation in Augusta, as well as with the Republican State Committee (upon which I sit) and in my eventual letters to the editors of Maine's daily newspapers.

Please be sure that this email is included with the other comments that you receive prior to your January 30th deadline for public comment.

Sincerely Yours,

Stephen J. Martin,
Aroostook County Vice-Chairman, Republican Party
Maine State Republican Committee
Amity, Maine
207-532-3635

January 23, 2009

Dear Mr. Wismer, I must admit that I'm very ill informed about this subject when it comes to state agencies and their rule making policies. However, to the extent I understand this issue I would not be pleased to know that a state employee could make a rule that would require the general public to abide by it without the legislation to permit same. Granted every agency must have internal rules to control the flow of things, but obviously this this issue is beyond that and thus I would appreciate having more information. An email response would be helpful or a phone call. . 353-8338. Thank you. John Lyons 8 Earle St. Lisbon Falls, 04252.

January 24, 2009

Dear Mr. Wismer,

Regarding Proposed Rule 2009-PO (Request for Comments on the Maine Administrative Procedure Act), the best "improvement" would be to get rid of the Maine APA altogether.

Rather than "streamlining" the governmental workings in Maine, the APA only serves to **increase exponentially the bureaucratic burden** on our state -- an ill-advised result at any time, but especially in our current economic situation.

However, beyond economic considerations is the essential question of the APA's constitutionality. Why should a **non-elected**, agency worker have the authority to write a "rule" which has the force of law?

I am very concerned that what passes (or doesn't pass) through proper legislative channels can be undone by the "rule-making" process! What, then, is the purpose of having any legislators at all?

Thank you, Mr. Wismer, for this opportunity to look at such a detrimental fixture as the Maine Administrative Procedure Act. I'm glad that comments from the public are being solicited, and I also think a public hearing would be in order.

Sincerely,

Michelle Truman
Hallowell, ME

PS. Perhaps you will be interested in an article published a few years ago about bureaucratic reduction in New Zealand. Here is the link:

<http://www.hillsdale.edu/news/imprimis/archive/issue.asp?year=2004&month=04>

January 24, 2009

Might you please explain to us what's up with this?

Isn't the process of imposing "Rules" with the force of "Law" on the American People by unelected, un-accountable bureaucrats a clear violation of our Constitution (or it's original intent and Spirit at the very least) and a form of "Tyranny" as described in our Declaration of Independence? It sure seems like it to me, frankly!

Are we all expected to be Lawyers now in order to understand all of the laws and "rules" which we are expected to obey and live under? Not all of us can afford to have an Attorney on retainer 24/7 in order to tell us how we may or may not live, you know.

Am I still a "Citizen" of the United States of America, or may we now consider ourselves "Subjects"?

Thank You;

John C. Clarke
194 Norris Hill Rd.
Monmouth ME 04259

----- Original Message -----

Subject: Info from Michelle Truman to all Miane Citizens
Date: Sat, 24 Jan 2009 08:55:59 -0800 (PST)
From: Edward Libby <coltted@yahoo.com>
Reply-To: coltted@yahoo.com
To: Ted Libby <Coltted@Yahoo.com>

Dear Friends,

I originally saw the notice about the Maine Administrative Procedures Act in the Kennebec Journal. It was on-line at this link:

<http://me.mypublicnotices.com/PublicNotice.asp?Page=PublicNotice&AdId=1253561>
<<http://me.mypublicnotices.com/PublicNotice.asp?Page=PublicNotice&AdId=1253561>>

(Text is also included at the end of this email.)

There's not much of a window for action *(deadline Jan. 26th - this coming Monday).* Feel free to share your own comments and concerns with Mr. Wismer ASAP:

TELEPHONE: (207) 624-7650

FAX: (207) 287-6545

E-MAIL: Don.Wismer@Maine.gov

<<http://us.mc1108.mail.yahoo.com/mc/compose?to=Don.Wismer@Maine.gov>>

Ask yourselves: why should someone -- a *non-elected*, agency worker -- have the authority to write a "rule" which has the force of law, without first passing through the legislative process? Consider the following:

Some 30 years ago there was a law stating all Maine law be passed written in a clear and simple style so the average citizen could understand it without having it interpreted. This law was expunged with seemingly no opposition! Unfortunately no succeeding legislature has had the wisdom or grace, or felt it their responsibility, to make the laws they pass easy for the citizens to understand, yet are told "Ignorance

of the law is no excuse!"

/**/
/*Important to note:*/

From the Constitution of the State of Maine:

Article III. Distribution of Powers.

Section 2.

*/ No person or persons, belonging to one of these departments, shall
/**/exercise /*

*/ any of the powers properly belonging to either of the others,
/*except in the

cases herein expressly directed or permitted. *//[my emphasis added]/ *

From the U.S. Constitution:

Section 8.

The/ *Congress*/ shall have power To make Rules for the
Government.

//[my emphasis added]/

The federal law /[national version of APA]/ was enacted in 1946 and a
number if state legislatures have since followed suit, thus sloughing
off the details of the laws they pass to those /non-elected, //agency
workers who may have built-in conflicts of interest. /

It may be the need to reduce all changes to computers not readily
accessed by John Q. Public, but the Maine legislature is to be
congratulated by re-evaluating the APA as one of the worst laws on its
books! As long as changes in laws affecting Maine people can be done so
easily, with scant notice, and certainly without legislative debate, no
Maine citizen is safe from poor and unwise administrative rules or
regulations with the force of law. We elected people to make our laws
fewer and simple to understand. It is unfair to have the same persons
formulate and apply those laws!

/Many thanks to Bettina Dobbs, who helped to provide the above information./

Please be aware and spread the word, if you can.

Thank you,

Michelle Truman

#

From link noted at beginning of email message:

NOTICE OF STATE RULEMAKING

Public Input for Proposed and Adopted Rules

Notices are published each Wednesday to alert the public regarding state
agency rule-making. You may obtain a copy of any rule by notifying the
agency contact person. You may also comment on the rule, and/or attend
the public hearing. If no hearing is scheduled, you may request one --
the agency may then schedule a hearing, and must do so if 5 or more

persons request it. If you are disabled or need special services to attend a hearing, please notify the agency contact person at least 7 days prior to it. Petitions: you can petition an agency to adopt, amend, or repeal any rule; the agency must provide you with petition forms, and must respond to your petition within 60 days. The agency must enter rule-making if the petition is signed by 150 or more registered voters, and may begin rule-making if there are fewer. You can also petition the Legislature to review a rule; the Executive Director of the Legislative Council (115 State House Station, Augusta, ME 04333, phone 207/287-1615) will provide you with the necessary petition forms. The appropriate legislative committee will review a rule upon receipt of a petition from 100 or more registered voters, or from "...any person who may be directly, substantially and adversely affected by the application of a rule..." (Title 5 Section 11112). World-Wide Web: Copies of the weekly notices and the full texts of adopted rule chapters may be found on the internet at: <http://www.maine.gov/sos/cec/rules>.

Wednesday, January 14, 2009

PROPOSALS

AGENCY: 29-250 - Department of Secretary of State,
Bureau of Corporations, Elections & Commissions

RULE TITLE OR SUBJECT: Request for Comments on the Maine Administrative Procedure Act

PROPOSED RULE NUMBER: 2009-PO

CONCISE SUMMARY: By January 30, 2009, the Secretary of State must file an annual report to the Governor and the Joint Standing Committee on State and Local Government on the Administrative Procedure Act. The purpose of this ad is to solicit, from state agencies and the public, recommendations for improvements to the rule-making process. We will include any comments on these recommended improvements in the report.

STATUTORY AUTHORITY: 5 MRSA Â§8056-A

*PUBLIC HEARING: None.

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*DEADLINE FOR COMMENTS: January 26, 2009

*

AGENCY CONTACT PERSON: Don Wismer, APA Coordinator, Department of Secretary of State, 101 State House Station, Augusta, ME 04333

*TELEPHONE: (207) 624-7650

FAX: (207) 287-6545

E-MAIL: Don.Wismer@Maine.gov*

January 25, 2009

Mr. Wismer,

Should you select the worst Maine law in place, you would have to put the Maine Administrative Procedures Act at the top of your list because it affects just about every certification agency, licensing agency, educational agency, professional agency and the multiple, expanding agencies under the DHS etc., etc!

It was passed originally to make things simpler for busy legislators who would then not need concern themselves about the nitty-gritty details and far-reaching effects of the law which they were sponsoring or upon which they would vote. If the legislators really did their elected jobs, they would make very certain that they alone were responsible for passing a needed law., As it is, many laws can have terms redefined, requirements changed and penalties posted which entrap unwary, trusting citizens!.

Ordinary citizens do not routinely turn to the larger newspapers' legal advertisements each week to see what changes are being proposed. There are now so many successive changes that it is to the point that each town, city or plantation ought to annually appoint someone to be on the lookout to see if the folks of their town would be adversely affected. Certainly, the legislators are not doing it for their constituents!

To counter the obvious argument that the experienced and non-elected agency employees have a more intimate knowledge of details, remember the conflict of interest law must apply here!

Our state employees, themselves, complain about the constant shower of mandates or "administrative laws" they receive from Washington. Those cumbersome, troublesome, sometimes quite un-necessary edicts which -must be complied with were and are the result of the federal APA!

Please. Help Maine to once again take the lead in having more sensible, easily understood laws passed by their elected legislators! Get rid of the APA and resurrect the former law which called for every law to be plainly and simply written. It would help to rebuild citizen confidence in our state government.

Thank you for your thoughtful consideration of this pivotal issue.

president of GEM

Maine)

(Mrs.) Bettina Dobbs, former

(Guardians of Education for

January 26, 2009

Dear Mr. Wismer,

I am not in favor of having non-elected, agency workers making "rules" that, in effect, have the force of "law".

I believe this is in violation of the Maine Constitution and I would aid in challenging this procedural change as unconstitutional.

Thank You,

Mark L. Hunkler
Sanford, Maine

January 26, 2009

Dear Mr. Wismer:

I'm e-mailing you to express my concern re: the Administrative Procedures Act. My recommendation would be that our State Legislature cut your authority to a BARE minimum—if not entirely. With the economy in distress as it is now, it would be a good cost-saving measure.

Your agency has become drunk with power that you neither are entitled to, nor deserve. And the citizens of Maine don't need further harassment from people who are NOT even elected, merely appointed.

Perhaps now would be a good time to look for other work.

Thank you for your time.

Pat Truman, Hallowell