

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
ONE HUNDRED AND SEVENTH LEGISLATURE  
COMMITTEE ON STATE GOVERNMENT

December , 1976

Legislative Council  
108th Legislature  
State House  
Augusta, Maine 04333

Members of the Council:

In accordance with S.P. 710, an Order directing the Committee on State Government to study various aspects of legislative review of administrative rules and regulations of state departments and agencies, we enclose the final report of the Committee.

Sincerely,

Theodore S. Curtis, Co-chairman

Leighton Cooney, Co-chairman

enclosure

REPORT OF  
THE COMMITTEE ON STATE GOVERNMENT  
ON  
LEGISLATIVE REVIEW OF ADMINISTRATIVE  
RULES AND REGULATIONS

December, 1976

Senate

Theodore S. Curtis, Chairman  
J. Hollis Wyman  
David L. Graham

House

Leighton Cooney, Chairman  
Michael E. Carpenter  
Judy C. Kany  
Thomas S. Pelosi  
Rodney S. Quinn  
James B. Wagner  
Roderick E. Farnham  
Olympia J. Snowe  
Theodore E. Lewin  
Robert G. Stubbs

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## I. BACKGROUND

S.P. 710 directs the Committee on State Government to study:

"... the desirability and best methods of providing for legislative review of administrative rules and regulations of state departments and agencies...[and to submit] ... any proposed legislation recommended by that study... [;see Appendix A for the text of the Order].

Pursuant to this Order, the Committee held several public hearings and consulted with the Office of the Attorney General.

Two factors have influenced the progress and content of this Study.

First, the Committee sought an Attorney General's opinion on the constitutionality of legislative review of administrative rules and regulations. The text of the opinion is in Appendix B. Very generally, the opinion states that, while the Legislature as a whole may conduct a final review of such rules and regulations, it may not delegate such review to another body, such as a legislative committee. A legislative committee may be empowered to review rules and to advise the Legislature with respect to such rules. But a legislative committee may not, under the Maine Constitution, be delegated the power to stay, amend, or repeal any rule or regulation.

Second, in a related study (S.P. 511) the Committee has been working with a drafting subcommittee of the Maine Bar Association and the Attorney General's Office which has been preparing a draft of a new, comprehensive administrative procedures act (APA). While the State Government Committee does not recommend either for or against this draft, its plans to recommend its consideration as a Committee Bill to the 108th Legislature.

## II. RECOMMENDATIONS

Although the Committee is unanimous in recommending the establishment of some form of legislative overview of rules, it is not unanimous in recommending the form that such overview ought to take. In particular, there is disagreement as to whether the legislative committee conducting such review should have the power to advise the Legislature only, or the power to independently suspend a rule until the Legislature has acted upon it.

The Committee also wishes to be cautious in establishing any form of overview so that its recommendations do not conflict with a future administrative procedures act. The study on the APA has been going for some time, and has revealed the complexities of drafting such a bill and the potential dangers of making errors. There is a close relationship between an APA and legislative overview of rules, which is illustrated in the definition of the word "rules". In order to establish legislative overview, it is necessary to define what is to be overviewed -- rules. The Bar Association — Attorney General's Office drafting subcommittee is still working on this definition, which is one of the most difficult tasks in drafting the APA. Like the drafting subcommittee, the State Government Committee at this writing is not prepared to recommend with finality what that definition ought to be. Therefore, the recommendations in this report must be taken as tentative.

The Committee recommends several alternatives for consideration:

1. Improve public access to rules;
2. Provide for advisory review of proposed rules by a new legislative committee;
3. Propose a Constitutional Amendment to permit a legislative committee to suspend a rule until the Legislature has acted upon it.

Recommendation 1. The Committee recommends that the Secretary of State be directed by legislation to establish and conduct a system to improve public access to the rules of State agencies and departments. Such a system shall consist, at a minimum, of 2 elements:

(a) For all rules in force as of January 1, 1978: the Secretary shall compile such rules; codify and index them; publish them in a standard format and size, which shall be susceptible to frequent and easy revision to reflect all changes and additions; provide a system for such frequent and easy revision; arrange for the free distribution of sets of such rules (and all changes and additions) throughout the State so as to provide reasonably timely, free public access; and arrange for the sale, at actual unit cost, of additional sets of such rules (and all changes and additions).

(b) For all rules proposed for adoption after January 1, 1978: the Secretary shall develop a Maine State Register which shall contain, for each proposed rule, a notice of intent to adopt; the text or a summary of the rule; a brief description of its purpose and effect; the proposed effective date of the rule; and the mailing address to which comments may be mailed and the time and place of any public hearing. Such Register shall be published as needed, and shall be distributed free of charge throughout the State so as to provide reasonably timely, free public access, and shall be available for sale at actual unit cost.

The Committee further recommends that all State departments and agencies be directed to assist the Secretary of State in the establishment and conduct of such system in any reasonable way that the Secretary deems necessary. Finally, the Committee recommends the appropriation of funds to cover the net cost of such a system.

The purpose of this amendment is to substantially improve public access to rules and to the process of rule-making.

With respect to the codification and publishing of rules, the Committee believes that the details of such a system should be left to the discretion of the Secretary of State. The Committee has in mind a set of rules published in such a way as to facilitate keeping the rules very current (accommodating changes and additions) -- in this regard, a set of looseleaf notebooks with replacement pages or pocket part updating as is done with the statutes would be considered appropriate. The Committee would not be adverse to having the Secretary of State purchase all or a part of this service from a private publisher, if that were found to be a better or cheaper way to accomplish the purpose, and has included language to authorize this in its draft legislation.

With respect to the State Register, the Committee believes that it may be good public policy to include in it material in addition to rules (for example, opinions of the Attorney General), but believes that the specific material to be included should be chosen by the Secretary of State.

With respect to both the codification of rules and publication of a State Register, the Committee uses in its draft bill the definition of "rule" that appears in 5 MRSA § 2301, sub-§ 3. The Committee is aware that use of this definition in effect excludes many rules, the making of which is authorized in other statutes. However, the Committee awaits the opportunity to review a better and more comprehensive definition which is expected to come from legislative review of the draft administrative procedures act. In the meantime, the Title 5 definition provides a useful and workable starting point.

Recommendation 2. The Committee <sup>a/</sup> recommends the establishment of a Joint Standing Committee of the Legislature to review proposed rules and to advise the Legislature whether such rules are within the intent of the authorizing legislation.

The opinion of the Attorney General discussed earlier implied that advisory review by a legislative committee is permitted by the Maine Constitution. Appendix D contains drafts to establish advisory review, as follows:

- A draft Joint Order establishing a Joint Standing Committee to Review Executive Branch Rules; directing the committee to review all proposed rules and to advise the Legislature whether such rules are within the intent of the authorizing legislation; and directing it to consult with other Joint Standing Legislative committees as is appropriate.
- A draft bill directing all State departments and agencies to provide certain information and assistance to the new Committee.

The Committee defines "rule" in Recommendation 2 as it is defined in Recommendation 1, for the reasons there discussed.

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a/

The Committee is not unanimous in its recommendations as to permanence of the new Committee. For example, some Committee members recommend that the new Committee should be permanent and that a constitutional amendment should not be sought to permit a rule until the Legislature has acted on it. Other Committee members recommend that the new Committee be interim only, until such a time as a constitutional amendment can be approved to permit such delegation to the Committee of legislative power to suspend.

Recommendation 3. Some Committee <sup>b/</sup> members recommend passage of legislation authorizing a referendum question to amend the Maine Constitution to permit the Legislature to delegate to a Joint Standing Committee of the Legislature the power to stay a rule and proposed rules which the Committee finds to be not within the intent of the authorizing legislation, until the Legislature has acted upon them.

Some members of the Committee believe that a system of advisory review is not a sufficient legislative oversight of administration rule making. Because there may be as much as 6 months between legislative session, it is possible for a rule not within legislative intent to be operable for a considerable time under an advisory review system. A mandatory system as contemplated in this recommendation could obviate such thwarting of legislative intent,

Draft legislation for the referendum is included at Appendix E.

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<sup>b/</sup> See footnote <sup>a/</sup> on page 6 which notes that the Committee is not unanimous in recommending a constitutional amendment.

APPENDIX A

S.P. 710

In Senate February 20, 1976

~~Ordered~~

WHEREAS, the Legislature has often given administrative bodies the power to make rules and regulations in order to ensure the even, swift and just application of legislative purpose in government; and

WHEREAS, these rules and regulations have, often through necessity, multiplied and become complex; and

WHEREAS, the question has often arisen lately as to whether these rules and regulations fully embody the legislative purpose of the Acts which authorize them; and

WHEREAS, a careful legislative review of administrative rules and regulations is often the only method of ensuring that these rules and regulations adhere to legislative purpose; now, therefore, be it

ORDERED, the House concurring, that the Joint Standing Committee on State Government shall undertake a study of the desirability and best methods of providing for legislative review of administrative rules and regulations of state departments and agencies; and be it further

ORDERED, that the Joint Standing Committee on State Government shall complete this study no later than November 30, 1976, and shall submit to the Director of Legislative Research on November 30, 1976, a

~~XXXX~~

~~XXXX~~

complete and final copy of any proposed legislation recommended by that study; and be it further

ORDERED, that the committee shall supply sufficient copies of that report directly to the Legislature within 15 days after the convening of the first regular session of the 108th Legislature and that any proposed legislation recommended by that committee shall be introduced into the Legislature by the committee within that 15-day time period.

HOUSE OF REPRESENTATIVES  
READ AND PASSED

APR 23 1976

IN CONCURRENCE

*Edwin...*  
ORDERED SENT FORTHWITH CLERK

SP 710

*and* IN SENATE CHAMBER *Lead*  
TABLED BY *SEN. CUMMINGS*  
OF *VT. PENNSYLVANIA*

FEB 29 1976

PENDING *Passage*  
HARRY H. STARRANCH, Secretary

IN SENATE  
TAKEN FROM TABLE ON MOTION  
BY SEN. SPEERS AND ON FURTHER  
OF KENNEBEC  
APR 23 1976  
MOTION BY *SEN. SPEERS*  
OF KENNEBEC  
*Passed*  
SENT DOWN FOR CONCURRENCE  
*Harry H. Starranch*  
SECRETARY  
Ordered sent forthwith

(Speers)  
Name: *General Speers*  
County: Kennebec

APPENDIX B

OPINION OF THE ATTORNEY GENERAL  
ON THE CONSTITUTIONALITY OF LEGIS-  
LATIVE REVIEW OF ADMINISTRATIVE  
RULES AND REGULATIONS.

JOSEPH E. BRENNAN  
ATTORNEY GENERAL



RICHARD S. COHEN  
JOHN M. R. PATERSON  
DONALD G. ALEXANDER  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

November 4, 1976

Honorable Judy C. Kany  
18 West Street  
Waterville, Maine 04901

Dear Mrs. Kany:

Questions:

You have orally requested an opinion of the Attorney General's Office concerning the constitutional authority of the Legislature, or appropriate parts thereof, to oversee the exercise of regulation-making powers by the agencies of the State to whom those powers have been delegated by statute. Two separate questions are raised:

1. Does the Legislature have constitutional authority to review and suspend administrative rules and regulations?
2. If the answer to the first question is affirmative, can a legislative committee be constitutionally empowered to suspend an administrative rule or regulation when the Legislature is not in session?

Answers:

The answer to the first question is affirmative, and to the second question, negative.

Discussion:

Reading the State Constitution strictly, it may appear that several of its provisions, read together, would bar legislative participation in the rulemaking function, which is a function performed by agencies of the Executive Department. Article III, section 1 expressly provides that the powers of the government shall be divided into three branches, and implies that each shall perform only the functions appropriate to it:

"The powers of this government shall be divided into three distinct departments, the legislative, executive and Judicial."

This implicit segregation is reinforced by Article III, 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 cases herein expressly directed or permitted."

Assuming that the adoption of regulations is properly a function of the State's administrative agencies, and that the agencies, being under the direction and control of persons appointed by the Governor, are in the Executive Department, and noting that the Constitution contains no provision "expressly directing or permitting" legislative participation in that function, it would appear that the separation of powers clauses of Article III would prohibit any legislative involvement.

However, the Constitutional question is not so clearly resolved as this analysis would indicate. The first premise above is that the regulation-making power is one properly belonging to the executive agencies. However legal authorities have consistently treated this power as a power legislative in nature, often using the term "quasi-legislative" when the power is exercised by some body other than the legislative body itself. See e.g. Davis, Administrative Law Treatise, § 5.01 (1958), City of Biddeford v. Biddeford Teachers Association, 304 A.2d 387 (Me. 1973). As to the placement of the legislative power, the Maine Constitution is rather unambiguous. Article IV, Part First, section 1 provides:

"The legislative power shall be vested in two distinct branches, a House of Representatives, and a Senate, each to have a negative on the other, and both to be styled the Legislature of Maine . . ."

The section goes on to reserve certain legislative powers to the people, acting by ballot, but no mention is made of the exercise of the legislative power by agencies of the executive department.

Hon. Judy C. Kany  
18 West St.  
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In the early part of this century, the prevailing wisdom on the question of who may exercise legislative power was clear, and the Supreme Judicial Court had no difficulty in interpreting the constitutional provision:

"The people of Maine, in organizing their government as a State, vested the legislative power of the government in a body "to be styled the Legislature of Maine," (Art. IV. Par. 1. Sec.1.) and did not confer any such power on any other person or body, and did not authorize the legislature to do so. It follows that the legislature alone can exercise the legislative power and alone is responsible for its wise exercise, and hence can transfer neither any of the power nor any of the responsibility to any other department or person. Says Judge Cooley in his Constitutional Limitations (6th Ed.) p. 137: "One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the Constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted, cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust." The proposition needs no other citation of authority, and we do not find it any where doubted.

"Further, the people in their constitution expressly divided the powers of the government into three departments, the legislative, executive and judicial, and declared that "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." Art. III, Secs. 1, 2. Hence not only is the legislature not authorized to transfer any of its legislative power and responsibility, but it is expressly forbidden to transfer any part of them to a person or persons exercising either executive or judicial functions." State v. Butler, 105 Me. 91, 96, 73 A. 560 (1909)

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Subsequent decisions have suggested an interpretation of the constitutional provision substantially narrower than the sweeping language of Butler would indicate. A few years after Butler, the Court considered and upheld the constitutionality of a statute withdrawing powers, including rule-making authority, from a municipality and conferring the same powers on a Commission to be appointed by the Governor. Lemaire v. Crockett, 116 Me. 263, 101 A. 302 (1917). In the course of that opinion, the Court referred to an earlier Opinion of the Justices interpreting Article IV, Part Third, Section 1, as vesting "in the Legislature a superintending authority, under and by virtue of what they might enact all laws, not repugnant to the Constitution, of a police and municipal nature . . . ." Opinion of the Justices, 99 Me. 515, 531, 60A. 85 (1905). The Lemaire opinion continued:

"A necessary corollary to this fundamental proposition is this, that the Legislature has the constitutional power to designate the instrumentality which shall execute and carry into effect the laws made for the benefit of the people under this section. It may entrust their execution to a board created by itself and to be appointed in a designated way, or to the municipality itself where the power is to be executed." Lemaire v. Crockett, supra at 266.

Since the statute contested in Lemaire conferred rule-making powers upon a Commission to be appointed by the Governor, it might be concluded that the delegation of legislative-type powers was within the scope of the powers to "execute and carry into effect the laws," and that such a delegation to an Executive agency was constitutionally proper.

A few years after Lemaire, the Supreme Judicial Court decided the constitutional limits of rule-making powers, in McKenney v. Farnsworth, 121 Me. 450, 118 A. 237 (1922). By statute, the Legislature had given the Commission of Sea and Shore Fisheries the authority to make certain rules and regulations which would "take precedence over any then existing statute inconsistent therewith." P.L. 1917, c. 293, § 3. Without a moment's hesitation, the Court declared:

"There can be no controversy regarding the unconstitutionality of the [quoted] clause of that section . . . . The Legislature alone can make and repeal statutes. It cannot delegate its power to do so to any other authority." McKenney v. Farnsworth, supra at 452.

But in the same opinion the Court expressly upheld the challenged regulation, which was not inconsistent with any statute. It did so after lengthy discussion of the practical impossibility of the Legislature "ascertaining the fact, circumstances and conditions" which were necessary to determine the details of their regulatory scheme. The Court viewed the Commission as an agent of the Legislature and denied that any legislative power had been conferred, but called the delegated authority "a ministerial duty." McKenney, supra, at 453.

Many more recent opinions have upheld delegations of rule-making authority and, in the process, have abandoned the fiction that these powers are anything other than legislative in nature. See, e.g., City of Biddeford v. Biddeford Teachers Association, 304 A.2d 387 (Me., 1973); Small v. Maine Board of Registration and Examination in Optometry, 293 A.2d 786 (Me., 1972); Opinion of the Justices, 261 A.2d 58 (Me., 1970); McGary v. Barrows, 156 Me. 250, 163 A.2d 747 (1960) In the Biddeford case, the Court said:

"It is settled beyond question that the Legislature may properly conclude that the purposes of its legislation may best be carried out through agents and that it may delegate to the agents a portion of its power to facilitate the functioning of the legislative program." (emphasis added) 304 A.2d at 397.

In a separate opinion in the same case, Justice Wernick concluded from his review of the prior cases that "In Maine, . . . this Court basically discarded its earlier conception that law-making powers and authority may not at all be delegated by the Legislature to another body. . . ." Biddeford, supra, at 407. Behind this evolution in constitutional construction from Butler to the recent cases has been the recognition of a simple truth, well-expressed by an approving quotation from a Pennsylvania case by the Maine Court in 1961:

"The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend, which cannot be known to the law-making power, and must, therefore, be a subject of inquiry and determination outside of the halls of legislation." Locke's Appeal, 72 Pa. 491, 498 (1873), quoted in Kovack v. City of Waterville, 157 Me. 411, 418, 173 A.2d 554 (1961)

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Contemporary commentators agree with these notions. Nearly three decades ago Professor Jaffe wrote that every statute is in fact a delegation of legislative powers to the agency or authority empowered to administer and enforce it, since those duties necessarily require interpretation of the statute. Essay on the Delegation of Legislative Power, 47 Columbia Law Review 359, 360 (1947). Professor Davis has noted that a strict interpretation of a separation of powers doctrine would preclude the existence of administrative agencies altogether, since they universally exercise powers both legislative and judicial in nature. Davis, Administrative Law Text, p. 25 (1975)..

In sum, the State Constitution has been interpreted to prohibit the delegation by the Legislature of any power to adopt or repeal statutes, but to permit this delegation of rule-making authority so long as that authority has been appropriately guided or confined. McKenney v. Farnsworth, 121 Me. 450, 118 A. 237 (1922); State v. Prescott, 129 Me. 239, 151 A. 426 (1930); Small v. Maine Board of Registration and Examination in Optometry, 293 A.2d 786 (Me., 1972); City of Biddeford v. Biddeford Teachers Association, 304 A.2d 387 (Me., 1973).

No Maine case has been found which goes so far in its constitutional analysis as to determine whether rule-making authority is a legislative function "properly belonging" to the administrative agencies (Me. Constitution, Article III, §2), or simply a part of the executive authority to see that the laws are faithfully executed (Article V, § 12). Without addressing the question squarely, the language of the Law Court's 1973 decision in the Biddeford case suggests a preference for the view that the power is legislative. It is unnecessary, however, to resolve this question, since, as the discussion below concludes, classifying the power as legislative does not give the Legislature any greater flexibility in responding to unsatisfactory regulations.

Since the delegation to administrative agencies of rule-making powers represents a transfer by the Legislature of its powers (even though it may not generally have been feasible for the Legislature to have exercised them), the Legislature has clear authority to take them back, in whole or in part. In Biddeford, concerning an analogous delegation to a municipal body, the Court noted: "There can be no doubt but that the Legislature, which is the source of all municipal authority [citation omitted], has also the power to take back from municipal officers portions of the authority it has earlier given them." 304 A.2d at 397-8 (Me., 1973). In his separate

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opinion in the same case, Justice Wernick noted that the gradual acceptance by the courts of delegated rule-making authority involved "acknowledging that legislative power, as such, is constitutionally permissible of delegation under appropriate limitations to check against abuse - the most potent of which is the legislature's retention of power to revise or withdraw the power granted." 304 A.2d at 404-5 (Me., 1973).

Thus, the Legislature plainly holds the power to negate or over-rule administrative regulations. The question is by whom or by what means may this power be exercised. May it be exercised by any legislative group or by any means short of the enactment of a statute? As currently proposed, the answer is that it may not.

The legislative power is vested by the Constitution of Maine in two distinct branches, the House of Representatives and the Senate. Me. Const., Art. IV, Pt. 1, §1. In order to take any action which will have the force of law, those bodies must follow the legislative procedures which are set forth in the Constitution. These procedures include the requirement that "every bill or resolution, having the force of law, . . . shall have passed both Houses." Me. Const., Art. IV, Pt. 3, § 2. This language does not appear to permit much variation. No mention is made of any subunits of the two Houses exercising the legislative power; and in the absence of such provision, it must be concluded that the framers intended to authorize only the Houses themselves to so act. Thus, even though the Legislature may, with proper standards, delegate legislative authority to an administrative agency, it may not delegate such authority to one of its own committees.

In this connection, the standard authority on legislative procedure, Mason, Manual of Legislative Procedure, notes:

"The power of any legislative body to enact legislation or to do any act requiring the use of discretion cannot be delegated to a minority, to a committee, to officers or members or to another body." Mason, § 519 (1962).

Thus, there is clear constitutional authority for the Legislature by Act or Resolve, to prospectively withdraw or limit the authority of an agency to adopt regulations, or amend the substance of the law being interpreted in a particular regulation to preclude

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the interpretation provided. In the latter event, the regulation would be voided by making it inconsistent with the statute. Without legislation, or until legislation may be enacted, any interested person may naturally attempt to persuade the agency to change its regulation.

Very truly yours,

  
JOSEPH E. BRENNAN  
Attorney General

JEB:jg

APPENDIX C

COMMITTEE DRAFT OF LEGISLATION TO  
IMPLEMENT RECOMMENDATION 1 (TO DI-  
RECT THE SECRETARY OF STATE TO CODIFY  
AND PUBLISH RULES AND TO PUBLISH A  
STATE REGISTER).

AN ACT to Improve Public Access to State Agency Rules by Providing for their Publication and for the Publication of a State Register

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

Sec. 1. 5 MRSA §2353, as last amended by PL 1963, c. 412, §8 is repealed.

Sec. 2. 5 MRSA c. 304 is enacted, as follows:

CHAPTER 304

PUBLICATION OF RULES; MAINE STATE REGISTER

§2381. Publication of Rules.

The Secretary of State shall, as soon as practicable after January 1, 1978, establish and conduct a system to improve public access to the rules of State agencies.

At a minimum, such system shall be as follows: for all rules in effect on January 1, 1978, the Secretary shall compile such rules; codify and index them; publish them in a standard format and size, which shall be susceptible to frequent and easy revision to reflect all changes and additions to such rules, including rules taking effect after January 1, 1978; provide a system for such frequent and easy revision; arrange for the free distribution of sets of such rules and all such changes and additions to appropriate public and private agencies throughout the State so as to provide reasonably timely, free public access to them; arrange for the sale, at actual unit cost, of additional sets of such rules and all changes and additions.

§2382. MAINE STATE REGISTER.

The Secretary of State shall, as soon as practicable after January 1, 1978, establish and conduct a Maine State Register to improve public access to the rule making of State agencies and to other information of importance to the public concerning the several branches of State Government. At a minimum, such Register shall be as follows:

1. Content and format. The Secretary of State shall prescribe the content and format of such registers; provided that the Secretary shall publish a notice of intent to adopt every proposed rule which is known to him timely for inclusion in the register; and further provided that the following information be published for each such proposed rule: the text or a summary of the rule, a brief description of its purpose and effect, the proposed effective date of the rule, and the mailing address to which comments may be mailed and the time and place of any public hearing.

2. Frequency of publication. Such Register shall be published as often as the Secretary determines is needed.

3. Distribution and sale. Such Register shall be distributed free of charge to appropriate public and private agencies throughout the State so as to provide reasonably free, timely public access; and shall be available for sale at actual unit cost.

§2383. State agencies to assist Secretary of State.

All State agencies shall assist the Secretary of State in any reasonable way that the Secretary deems necessary for accomplishing the purposes of this Chapter.

Nothing in this Chapter shall be interpreted to supercede the requirement of any other law. Where the requirements of this Chapter and another law may be satisfied by the identical administrative action, the requirements of this Chapter alone may be used for such satisfaction; such requirements may include the requirement to give notice of pro-

posed rule making and to publish rules. Where the requirements of this Chapter are so used, the Secretary may bill the cooperating agency for an amount not to exceed actual unit cost.

§2384. Establishment and use of Revolving Funds.

Subject to all other Laws concerning the receipt, custody, and disbursement of funds, the Secretary of State may establish and maintain separate Revolving Funds for the publication of rules and for the Maine State Register. The Secretary is authorized to use such funds for the receipt and disbursement of State and non-State funds pursuant to this Chapter. Such funds shall be non-lapsing.

Upon a written finding that such purchase would be a less expensive way to accomplish the purposes of this Chapter, the Secretary is authorized, subject to all other provisions of this Chapter, to contract with a private firm or firms for the purchase of part or all of the following: compiling, codifying, indexing, printing, distributing and selling of rules and revisions; and editing, printing, distributing, and selling the Maine State Register.

Sec. 3. Appropriation. There is appropriated from the General Fund to the Department of the Secretary of State the sum of \$47,417 for the biennium to be used to carry out the purposes of this Act. Included in this amount is a working capital advance of \$5000 which shall not lapse and which is to be repaid from sales of documents authorized to be sold by this Act. The repayment is to be made not later than June 30, 1980. The breakdown shall be as follows:

	<u>1977-78</u>	<u>1978-79</u>
<u>Department of the Secretary of State</u>		
Personal services	(2) \$14,688	(2) \$21,101
All other	7,503	4,125
Capital expenditures	----	----
	<u>\$22,191</u>	<u>\$25,226</u>

## STATEMENT OF FACT

This Bill is to implement one recommendation contained in a report prepared pursuant to S.P. 710 by the Joint Standing Committee on State Government of the 107th Legislature. Copies of the Report may be obtained in the Committee's office.

The purpose of the Bill is to substantially improve public access to rules and to the process of rule making by establishing systems for publishing existing State agency rules and for notifying the public of the intent to adopt new rules.

With respect to existing State agency rules, the Secretary of State is directed to develop a system to compile, codify, index, revise, and publish them. The administrative details are left to the direction of the Secretary; the Committee has in mind a system which would facilitate keeping the rules very current, as by a set of looseleaf notebooks with replacement pages or pocket part updating as is done with the Statutes.

With respect to rules proposed by State agencies for adoption, the bill directs the Secretary to publish a Maine State Register, containing notices of intent to adopt rules and other information of importance to the public regarding State government, such as opinions of the Attorney General, changes in the location of State agency field offices, and significant agency reorganizations.

Both the compiled rules and their revision and the Register are to be distributed free of charge to appropriate public and private agencies throughout the State so as to provide timely, free public access. Such agencies would include, for example, public libraries. In addition, copies of both the rules and the Register will be offered for sale at cost to the public. This Bill uses the definition of "rule" that appears in 5 MRSA §2301, sub-§3. The Committee is aware that use of this definition in effect excludes some rules, the making of which is authorized in other statutes. The Committee awaits the development of a better and more comprehensive definition which is expected to come from Legislative consideration of draft administrative procedures act prepared by a subcommittee of the Maine Bar Association and the Attorney General's Office, in cooperation with the Committee. In the meantime, the Title 5 definition provides a useful and workable starting point.

An appropriation is included to pay the costs of administration for the Bill. It includes funds for 2 positions (one professional and one secretary) and their related costs, and a working capital advance of \$5,000 to be made in 1977-1978. The advance is to be used to initially finance copies of the rules and register which which will later be sold to the public. Proceeds of the sales will be used to repay the advance.

APPENDIX D

COMMITTEE DRAFT TO IMPLEMENT RECOM-  
MENDATION 2 (A JOINT ORDER ESTABLISH-  
ING A JOINT STANDING COMMITTEE TO RE-  
VIEW EXECUTIVE BRANCH RULES; AND A  
DRAFT BILL DIRECTING EXECUTIVE DE-  
PARTMENTS AND AGENCIES TO COOPERATE  
WITH THE COMMITTEE).

PROPOSAL CHANGES IN THE JOINT  
RULES OF THE LEGISLATURE

Proposal 1. Amend Joint Rule 1, 1¶, to read:

1. Joint Standing Committees. There shall be no more than  
~~22~~ 23 Joint Standing Committees which shall be appointed as follows  
at the commencement of the session, viz:

- On Agriculture
- On Appropriations and Financial Affairs
- On Business Legislation
- On Education
- On Election Laws
- On Energy
- On Fisheries and Wildlife
- On Health and Institutional Services
- On Human Resources
- On Judiciary
- On Labor
- On Legal Affairs
- On Liquor Control
- On Local and County Government
- On Marine Resources
- On Natural Resources
- On Performance Audit
- On Public Utilities
- On Rule Review
- On State Government
- On Taxation
- On Transportation
- On Veterans and Retirement

Proposal 2. Enact a new Joint Rule 29, to read:

29. Rule review. The Joint Standing Committee on Rule Review shall review each rule promulgated under 5 MRSA § 2301, sub-§ 3 with a proposed effective date of October 1, 1977, or later. Such Committee shall consult with other Joint Standing Legislative Committees as is appropriate, and shall report to the next session of the Legislature whether each such rule is within the intent of its authorizing legislation.

#### STATEMENT OF FACT

This proposal is one of several recommendations in a Study of the Joint Standing Committee on State made pursuant to S.P. 710 of the 107th Legislature. An Attorney General's opinion sought by the Committee stated that, while the Legislature as a whole may conduct a final review of executive branch rules, it may not delegate such review to another body, such as a legislative committee. However, advisory review by the legislative committee is permitted, and this proposal is to establish a Committee to conduct such review.

A Joint Standing Committee on rule review is established, which will review each State agency rules proposed to take effect after September 30, 1977 and report to the next legislative session whether such rule is within the intent of the authorizing legislation.

108TH LEGISLATURE

AN ACT to Require State Agencies to Submit Proposed Rules and Related Information to the Legislature

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

5 MRSA §2351, sub-§5 is enacted to read:

5. Filing with Legislature. Each agency shall submit to the Legislative Administrative Director a copy of any proposal to adopt, amend, or repeal any rule authorized by 5 MRSA, §2301, sub-§3, and such other related material as the Director may request. Such submission shall be made at the same time as the submission to the Attorney General pursuant to subsection 5 of this section. Each agency shall provide such additional information pertinent to such rule as the Director or a Legislative Committee may request.

STATEMENT OF FACT

This Bill is the result of a study assigned by SP 710 of the 107th Legislature to the Joint Standing Committee on State Government. In the report prepared pursuant to the study, some members recommended that a Joint Committee of the Legislature be established by Joint Legislative Order to provide advisory review of rules proposed for adoption by State agencies.

This Bill will require agencies proposing to adopt, amend, or repeal a rule to submit to the Legislature copies of such a proposal and other information pertinent to the Legislative review of the rule.

APPENDIX E

COMMITTEE DRAFT OF LEGISLATION TO IMPLEMENT RECOMMENDATION 3 (AUTHORIZING A REFERENDUM QUESTION TO AMEND THE MAINE CONSTITUTION TO PERMIT THE LEGISLATURE TO DELEGATE TO A JOINT STANDING COMMITTEE OF THE LEGISLATURE THE POWER TO STAY RULES AND PROPOSED RULES WHICH THE COMMITTEE FINDS TO BE NOT WITHIN THE INTENT OF AUTHORIZING LEGISLATION).

108TH LEGISLATURE

RESOLUTION, Proposing an Amendment to the Constitution to Permit the Legislature to Delegate to a Joint Standing Committee of the Legislature the Power to Stay Rules and Proposed Rules of State Executive Agencies Found Not Within the Intent of the Authorizing Legislation.

Constitutional amendment. RESOLVED: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Art. IV, pt. 3, §1, 2¶, is amended by adding at the end a new paragraph to read:

The Legislature may by law delegate to a legislative committee, comprised of members of both houses in reasonable proportion to their membership, the power to stay any rule or proposed rule of an agency of the executive department which is found not to be within the strict intent of the legislation which authorized the agency to promulgate rules. Such stay shall terminate either by the date of passage of a statute to repeal or amend the rule or by the 25th legislative day of the next regular session of the Legislature, whichever is earlier. For the purposes of this paragraph, "rule" shall mean a rule or regulation or proposed rule or regulation as defined in a law which the Legislature enacts in the statutes, to carry out the purposes of this paragraph.

Form of question and date when amendments shall be voted upon.

Resolved: That the alderman of cities, the selectment of towns and the assessors of the several plantations of this State are empowered and directed to notify the inhabitants of their respective cities

towns and plantation to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives at the next general election in the month of November or special state-wide election on the Tuesday following the first Monday of November following the passage of this resolution to give in their votes upon the amendment proposed in the foregoing resultion, and the question shall be:

"Shall the Constitution be amended as proposed by a resolution of the Legislature to permit the Legislature to delegate to a Joint Standing Committee of the Legislature the power to stay rules and proposed rules of State executive agencies found not to be within the intent of the authorizing legislation until the Legislature has had an opportunity to Act?"

The inhabitants of said cities, towns and plantations shall vote by ballot on said questions, and shall indicate by a cross or check mark placed against the words "Yes" or "No" their opinion of the same. The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the office of the Secretary of State in the same manner as votes for Governor and Members of the Legislature, and the Governor shall review the same, and if it shall appear that a majority of the inhabitants voting on the question are in favor of the amendment, the Governor shall forthwith make known the fact by his proclamation, and the amendments shall thereupon, as of the date of said proclamation, become a part of the Constitution.

Secretary of State shall prepare ballots. Resolved: That the Secretary shall prepare and furnish to the several cities, towns and plantations ballots and blank returns in conformity with the foregoing resolution, accompanied by a copy thereof.

#### STATEMENT OF FACT

This resolution is the result of a study assigned by the 107th Legislature to the Joint Standing Committee on State Government. It represents the recommendations of certain Committee members for amendment to the Constitution to permit the Legislature to delegate to a legislative committee the power to stay rules and proposed rules which are not within the intent of the authorizing legislation.

The Amendment will permit the Legislature to delegate to one or more of its Joint Standing Committees the power to stay a rule or proposed rule of a State agency. Such stay will be in effect until the earlier of passage of either a statute to repeal or amend the rule or of the 25th legislative day. "Rule" is to be defined in a statute passed by the Legislature to carry out the purposes of the Amendment.