

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

JAMES E. TIERNEY  
ATTORNEY GENERAL



86-21

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

December 17, 1986

Rodney S. Quinn  
Secretary of State  
State House Station #29  
Augusta, Maine 04333

Dear Mr. Quinn:

In order to provide guidance to agencies conducting rulemaking under the Administrative Procedure Act, you have requested the Opinion of this Department concerning the legal effect of the three separate amendments of 5 M.R.S.A. § 8053-A enacted during the Second Regular Session of the 112th Legislature. That statutory provision, requiring notification of the Legislature of agency rulemaking activity, was amended by P.L. 1985, c. 528, c. 680, and c. 737. Each of these amendments was made without reference to, or apparent knowledge of, any of the others, as evidenced by the reference to § 8053-A "as enacted by P.L. 1985, c. 270" in the enacting clause of each.

In the Opinion of this Department, all three amendments would be given legal effect by the courts of this state since the amendments are in no way incompatible, and there is no evidence of any legislative intention to withhold or withdraw their approval from any of the amendments. To the contrary, the amendments are duplicative to a considerable degree.

The first of the three amendments, c. 528, is addressed solely to the first paragraph of § 8053-A. The underlying Legislative Document No. 1748 was entitled, "AN ACT to Allow Administrative Agencies to Continue to Adopt Emergency Rules when Necessary." It amends the provision's first paragraph as follows:

At least 20 days prior to the adoption of any rule, or within 10 days following the adopting of an emergency rule, the agency shall provide copies of the rule to the ~~Legislative-Administrative-Direector-of-the~~ Legislature Executive Director of the Legislative Council. ~~The Legislative Administrative-Direeter~~ Executive Director of the Legislative Council, or his designee, shall refer the rule to the appropriate joint standing committee or committees of the Legislature for review.

The pre-existing statute made no adequate provision for legislative notification of emergency rules, which often proceed from conception to adoption in less than 20 days. Even where legislative comment is impractical, the amendment seeks to clearly authorize emergency rules, while still requiring notification of the Legislature. The paragraph was also amended by c. 528 to update the title of the legislative staff member to whom rules were to be provided.

The second enactment was broader in scope. Chapter 680 enacted L.D. 2341, entitled, "AN ACT to Amend Rulemaking Provisions in the Maine Administrative Procedure Act." Section 3 of that bill amended 5 M.R.S.A. § 8053-A in three respects, including precisely the two amendments already made by Chapter 528.<sup>1/</sup> In addition, § 3 of Chapter 680 made a further substantive change to the statute, specifying that agencies were to provide the Legislature with copies of the proposed rule, and do so at the same time that notice of rulemaking was provided to the Secretary of State. Since Chapter 680 incorporates the special provision for emergency rules made by Chapter 528, there is no inconsistency in the substantive changes made by these two amendments.

Finally, Chapter 737, Part B, § 13 amended § 8053-A only to correct the title of the Director of the legislative staff, and is thus substantially identical to those changes already made by c. 680. Although in one place Chapter 737 utilizes the shortened title "executive director" where Chapter 680 refers more fully to "Executive Director of the Legislative Council," the meaning of the two amendments is unambiguously the same.

---

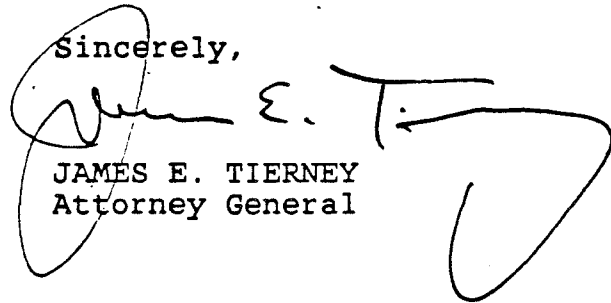
<sup>1/</sup> With respect to the change of the legislative staff member's title, Chapter 680 was actually broader than Chapter 528, making the title change throughout Section 8053-A, rather than in the first paragraph only. P.L. 1985, c. 690, §§ 3 and 4.

Since "the fundamental objective in interpreting any statute is to determine the intent of the legislature in enacting it and to give effect to that intent," Penobscot Nation v. Stilphen, 461 A.2d 478, 481 (Me. 1983), and "the central purpose of statutory construction is 'to save, not to destroy,'" State v. Crocker, 435 A.2d 58, 63 (Me. 1981) quoting State v. Davenport, 326 A.2d 1, 5-6 (Me. 1974), it is apparent that the Maine courts would honor the three-faceted intent of the Legislature embodied in Chapter 680, and give effect to each amendment. This result is consistent with one commentator's observation that:

In the absence of an unreconcilable conflict between two acts of the same session [of a legislative body], each will be construed to operate within the limits of its own terms in a manner not to conflict with the other.  
1A Sutherland, Statutory Construction  
§ 23.17, 4th ed. (1981).

I trust this will enable you to provide authoritative guidance to the state agencies.

Sincerely,



JAMES E. TIERNEY  
Attorney General

JET/ec