

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1784

H. P. 1412

House of Representatives, April 7, 1975

On Motion of Mr. Cooney of Sabattus, referred to Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Shute of Stockton Springs.

Cosponsors: Mr. Carey of Waterville and Mr. LaPointe of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Insure Citizen Participation in the Promulgation, Amendment and Repeal of Agency Rules.

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

Sec. 1. 5 MRSA § 2354 is amended by inserting at the end the following new sentence:

Within 30 days after submission of a petition, the agency either shall deny the petition in writing stating its reasons for the denials or shall initiate regulation-making procedures in accordance with the procedures set forth in this chapter.

Sec. 2. 5 MRSA §§ 2355 to 2359 are enacted to read:

1. Hearing required; exception. An agency shall precede all promulgation, amendment or repeal of rules with notice and public hearing unless:

A. The proposed action is procedural rather than substantive; or

B. The proposed action is designed solely to bring the language of an existing rule into conformity with a statute which has been changed or adopted since the adoption of such rule, to bring the language of an existing rule into conformity with a controlling judicial decision or to comply with a federal requirement; or

C. The proposed action is adopted pursuant to section 2358 as an emergency rule or action; or

D. The proposed action is published in each daily newspaper published in the State together with a statement to the effect that the agency will adopt

the proposed action without public hearing thereon unless, within 30 days after publication of the notice, it is petitioned for a public hearing on the proposal by 5 persons who will be affected by the action, a municipality which will be affected by the action, or an association which is representative of a farm, labor, business or professional group which will be affected by the action. If the agency receives such a petition it shall not proceed with the proposed action until it has given notice and held a hearing as prescribed by this chapter.

2. When exceptions do not apply. The exceptions to the general hearing requirement set forth above do not apply if:

- A. Another section of the statutes specifically requires the agency to hold a hearing prior to adoption of the proposed action under consideration; or
- B. The agency determines that a hearing is desirable, in which event the agency has discretion to determine what kind of hearing it will hold and what kind of notice it will give.

§ 2356. Notice of hearing

1. Notice of public hearing. Whenever an agency is required by law to hold a public hearing as part of its rule making, amending or repealing process, the agency shall:

A. Publish notice of said hearing in every daily newspaper published in the State. The notice shall be given at least 10 days prior to the date set for the hearing and shall include:

- (1) A statement of the time and place at which the hearing is to be held; and
- (2) Either the express terms or an informative summary of the proposed rule action, or a description of the subject matter to be discussed; and
- (3) Insofar as practicable, a reference to the statutory authority pursuant to which the agency proposes to adopt, amend or repeal the rule; and
- (4) Any additional matter which may be prescribed by statute applicable to the specific agency or to the specific rule or class of rules under consideration.

B. Transmit written notice of such hearing to every member of the Legislature who previously has made a request in writing filed with the Legislative Information Office to be notified of proposed rule actions. The Legislative Information Office upon request of any agency shall transmit to such agency a list of all such Legislators who have theretofore filed such request, together with their addresses; and

C. Take such other steps as it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed rule action.

2. Failure to receive notice not invalidating. Failure of any person to receive notice of a hearing on a proposed rule action is not grounds for in-

validating the resulting action if notice was published in the daily newspapers of the State, as provided above.

§ 2357. Conduct of the hearing

The agency shall hold a public hearing at the time and place designated in the notice of the hearing, and shall afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposal under consideration. The presiding officer may limit oral presentations if he feels that the length of the hearing otherwise would be unduly increased by reason of repetition. The agency shall afford each interested person opportunity to present his or her views orally. At the beginning of each hearing, if the agency has made a proposal, the agency shall present a summary of the factual information on which its proposal is based, including any information obtained through the use of advisory committees or as a result of informal conferences or consultations.

The agency shall keep minutes or records of the hearing in such manner as it determines to be desirable and feasible. The agency or its duly authorized representatives may continue or postpone the hearing to such time and place as it determines, but proper notice must be given of the new time and place.

If the officer or a quorum of the board or commission charged by law with ultimate responsibility for rule actions is not present at the hearing a person who appears at the hearing shall be given an opportunity to present his arguments to such officer or quorum of such board or commission prior to adoption of the proposed action if, at the hearing, the person makes a request for such opportunity in writing to the person presiding at the hearing. Such officer, board or commission may in its discretion require such arguments to be presented in writing. If a record of the hearing has been made, argument shall be limited to the record. When oral argument is accorded, such officer, board or commission may impose reasonable limitations on the length and number of appearances in order to conserve time and preclude undue repetition.

The procedures prescribed by this section do not supersede procedures prescribed by any statute relating to the specific agency or to the rule or class of rules under consideration.

§ 2358. Emergency rule actions excepted from certain procedures

If preservation of the public peace, health, safety or welfare necessitates promulgating, amending or repealing a rule prior to the time this action could be accomplished if the agency were to comply with the notice, hearing and publication requirements of this chapter, the agency may adopt such action as an emergency action. An emergency action takes effect upon filing with the Secretary of State and publication in each of the daily newspapers published in the State or on such later date as is specified in a statement filed and published with the action, but remains in effect only for a period of 120 days.

An agency shall mail copies to each Member of the Legislature and shall take such other steps as it considers to be feasible to make the emergency action known to the persons who will be affected by it.

Before the expiration of 120 days, the notice, hearing and publication required by this chapter shall be accomplished if the emergency action is to become a permanent change in the agency's rules.

§ 2359. Committee for review of administrative rules

1. Creation. There is hereby created a Joint Standing Legislative Committee to be known as the Committee for Review of Administrative Rules. All rules adopted, amended or repealed shall be referred to the committee and it shall conduct public hearings on such rules as it deems necessary. The committee may refer any rule to another standing committee with greater experience in the subject matter of the rule and said committee may hold a public hearing on the rule if it so desires.

2. Amendment to rules or repeal of rules. Upon the recommendation by a majority of the committee to which a rule has been referred according to subsection 1, the Legislature may pass by resolve, in compliance with the Constitution, Article 4, Section 2, an amendment to any rule or the repeal of any rule.

3. Appointment and administration of committee. The committee for review of administrative rules shall be appointed and administered in manner determined by the Legislature.

STATEMENT OF FACT

The purpose of this bill is to formalize procedures whereby citizens may participate in the formulation of agency rules and whereby the Legislature may amend or repeal a rule it finds does not sufficiently carry out the intent of the statute which caused the rule to be implemented.