

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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**Legislative Document**

**No. 211**

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H. P. 173

House of Representatives, February 1, 1977

Referred to Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Palmer of Nobleboro.

Cosponsors: Miss Aloupis of Bangor, Messrs. Kelleher of Bangor, Harland of South Berwick.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT to Provide for Legislative Review and Automatic Termination of  
State Agency Rules.**

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

Sec. 1. 5 MRSA c. 308 is enacted to read:

**CHAPTER 308**

**STATE AGENCY RULES**

§ 2501. Statement of intent

The intent of this chapter is to institute a system which will require that all rules promulgated by any state agency of the Executive Department shall automatically expire within a period of not to exceed 5 years, as set out in this chapter, unless such rules are renewed by statute.

§ 2502. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Administering agency. "Administering agency" for a rule shall mean the state agency responsible for promulgating such rule.

2. Committee report. "Committee report" shall mean the report prepared by a joint standing committee pursuant to this chapter. At a minimum, such report shall include the text of the rule and a brief description of it; an evalua-

ation of the rule, treating the criteria defined in subsection 3 and other arguments for and against termination and the committee's recommendations and the reasons therefor.

3. **Criteria.** "Criteria" shall be the variables by which a joint standing committee shall evaluate and recommend to the Legislature whether a rule shall automatically terminate. At a minimum, such criteria shall include the following:

A. **Legislative intent.** Whether the rule is consistent with the intent of the legislation which authorized its promulgation;

B. **Effect of the rule.** Are the effects of the rule suitable, including its benefits and costs, including costs of compliance and of administration; and

C. **Changes in circumstances.** Whether circumstances have changed since either the promulgation of the rule or the passage of the legislation which authorized its promulgation, which changed circumstances may, in the joint committee's view, suggest that a change be made in that legislation or in the methods of accomplishing its purposes, including the appropriateness of using a rule to accomplish that purpose.

4. **Rule.** "Rule" shall mean any rule of a state agency that is:

A. Subject to the requirements of section 2301, subsection 3, and including rules already in effect on September 16, 1961; or

B. Termed a "rule" in any other statute.

5. **Standing committee.** "Standing committee" shall mean a joint standing committee of the Legislature as identified in the Joint Rules of the Legislature.

#### § 2503. Assignment of rules to standing committees

Not later than January 15, 1978, every administering agency shall submit to the Legislature a copy of each rule promulgated by it which is in effect on January 1, 1978, a list identifying each rule by title or descriptive phrase and a brief description of each rule, including a reference to the Title and section of the law which is the authority for the rule.

Each rule shall be assigned by joint order of the Legislature to be reviewed by a joint standing committee of the Legislature. The assignment may be done by identifying classes of rules on some reasonable basis, such as administering organization, or object or person regulated.

Every standing committee shall recommend to the Legislature an expiration schedule for all rules in effect on January 1, 1978, which are assigned to it pursuant to this section. The expiration schedule shall provide for the expiration of every such rule not later than January 1, 1983. The expiration schedule shall, to the extent possible, schedule the expiration date of such rules so as to provide an equal workload for committee review in each of the 5 years between January 1, 1978 and January 1, 1983.

The Legislature shall approve by statute an expiration schedule for each rule in effect on January 1, 1978. The expiration schedule shall provide for the expiration of every rule not later than January 1, 1983.

§ 2504. Automatic expiration of rules

Every rule in effect on January 1, 1978, shall expire January 1, 1983, unless terminated earlier by the administering agency or by statute.

Every rule taking effect after January 1, 1978, shall expire on January 1st of the 5th year of its operation unless terminated earlier by the administering agency or by statute.

Any rule shall continue in effect for 5 years past its expiration date, or for a shorter period specified by statute, when its continuation is authorized by law.

No rule shall be terminated and promulgated again in the same or similar form, or with the same or similar purpose or effect, where the purpose or effect of such termination and promulgation is to avoid automatic or statutory termination of such rule. The Attorney General shall sue to stop such promulgation.

A grace period shall extend for a period of one year past the expiration date of each rule. During that period the administering agency is authorized to conduct any reasonable activities, including the obligation and expenditure of funds, which are necessary to terminate the rule as expeditiously as possible while minimizing any adverse effects on the public. The administering agency shall give timely written notice, in advance of the grace period, to the Legislative Administrative Director of the details of any planned grace period.

§ 2505. Joint legislative committee review of rules

A joint standing committee shall hold a public hearing on every rule assigned to it for review under section 2503. At least 7 days and not more than 21 days before public hearing, the committee shall publish notice in a newspaper of general circulation in the area of the State affected. Notice shall refer to the statutory authority under which the rule was adopted, identify the rule by title or brief descriptive phrase, describe the purpose of the hearing and state the time and place of the public hearing and the manner in which oral or written testimony may be submitted.

A committee report shall be submitted to the Legislature for each rule reviewed. Any members of the joint standing committee shall have the opportunity to prepare a minority report, which shall be made a part of the committee report.

§ 2506. Administering and other agencies to cooperate

All state agencies shall cooperate in the conduct of this chapter. Such cooperation shall include, but not be limited to, the providing of information, assistance, including evaluation, and advice to the joint standing committees, as is requested.

§ 2507. Legislative Administrative Director to cooperate

The Legislative Administrative Director shall determine the amount of staff and other support required for the purposes of this chapter, and shall provide it, subject to the approval of the Legislative Council. The director shall submit a written evaluation of the operation of this chapter from time to time, but not less often than February 1st of the even-numbered years.

§ 2508. Savings clause

The provisions of this chapter shall not apply to any rule where such application would prevent the administering agency or another state agency from participating in any cash or in-kind grant-in-aid program of the Federal Government. The Legislature may, by statute, suspend the operation of this section for such a rule.

Each administering agency shall conduct a continuing review of its rules and its participation in such federal grant-in-aid programs to determine whether such participation will be affected by this chapter. Each such agency shall give timely notification, in writing, to the Legislature of the nature of such effect.

**Sec. 2. Appropriation.** There is appropriated from the General Fund to the Legislative Account the sum of \$70,000 to carry out the purposes of this Act. The breakdown shall be as follows:

	1976-77	1977-78
LEGISLATIVE ACCOUNT		
LEGISLATURE		
Personal Services	(2) \$22,500	(2) \$30,000
All Other	7,500	10,000
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	\$30,000	\$40,000

#### STATEMENT OF FACT

In recent years there has been a proliferation of rules by state agencies which profoundly affects the citizens and economy of the State. Despite this situation, there is no system to assure that such rules are necessary or even consistent with the intent of the legislation which authorized them. The purpose of this bill is to correct this situation by providing that such rules automatically terminate after being publicly reviewed. The bill also provides safeguards to permit the continuation of rules which are necessary and are consistent with legislative intent.

Key Features of this bill are :

1. All current and future state executive agency rules shall have a life of not to exceed 5 years;

2. Prior to its automatic expiration, each rule will be publicly reviewed by a joint standing committee of the Legislature, which will recommend to the Legislature whether such rule should automatically expire or be continued;

3. Each rule will automatically expire unless the Legislature approves its continuation by statute;

4. A savings clause will stay the automatic termination where the operation of the bill would prevent participation in federal grant programs; agencies are required to notify the Legislature where this situation potentially exists, so that the Legislature may take appropriate action; and

5. An appropriation is included for staff and other support necessary to accomplish the purposes of the bill.