

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1645

S. P. 453

Referred to Committee on State Government.
and ordered printed.

In Senate, April 13, 1977
Sent down for concurrence

MAY M. ROSS, Secretary

Presented by Senator Speers of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Provide for Legislative Oversight of Executive Programs and
to Provide for Legislative Review of Administrative Rules.

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

Sec. 1. 1 MRSA c. 31 is enacted to read:

CHAPTER 31

LEGISLATIVE REVIEW OF ADMINISTRATIVE RULES

§ 2501. Definitions

1. Agency. "Agency" means each body of State Government authorized by law to adopt rules, to issue licenses or to take final action in adjudicatory proceedings, including, but not limited to, every authority, board, bureau, commission, department or officer of the State Government so authorized; but the term shall not include the Legislature, Governor, courts, school districts or municipalities, counties and subdivisions thereof.

2. Rule. "Rule," as applied to a rule adopted, amended or repealed by an agency, includes every regulation, standard, statement of policy or interpretation of general application and future effect, which implements or makes specific the law enforced or administered by the agency or governs its organization or procedure. It does not include regulations concerning only the internal management of the agency not directly affecting the rights or procedures available to the public, and does not include rules already in effect on September 16, 1961.

§ 2502. Review procedure

A rule of an agency adopted under Title 5, Part 6, shall take effect under these procedures.

The agency adopting the rule shall submit it to the Joint Standing Committee on Performance Audit, hereafter called the committee, no later than 60 days before the rule is to take effect. If the committee does not notify the Legislature of its disapproval of the rule within 30 days after the rule has been submitted to them for review, the rule may take effect 60 days from the date the rule was submitted to the committee for potential review. If the committee decides to review the rule, it shall have 30 days from the time of submission of the rule to conduct that review. If the committee disapproves the rule using the standards promulgated by section 2504, it shall, within 30 days from the time the rule was submitted to it, notify the Legislature of its disapproval.

The Legislature may, within 60 days from the time of submission of the rule to the committee, pass a joint resolution voiding the rule, in which case the rule shall not take effect. If the Legislature fails to pass a joint resolution voiding the rule within that 60-day time period, the rule may take effect any time after the end of that period.

If the Legislature is not in session at the time that the committee disapproves the rule under the standards contained in section 2504, the rule shall not take effect until 30 days after the convening of the next regular session of the Legislature. If the Legislature does not, within that 30-day period, pass a joint resolution voiding the rule, the rule may take effect any time after the expiration of that 30-day period.

§ 2503. Emergency rule

A rule promulgated by an agency may take effect immediately without compliance with section 2502, if the Governor submits the rule to the committee within 3 days of its promulgation accompanied by his certification in writing and over his signature that the rule is of an emergency nature and is necessary for the preservation of the public peace, health or safety. The Governor shall not delegate this power of certification to any other person.

Upon submission of an emergency rule to the committee, the committee shall have 30 days in which to review the emergency rule. If the committee within that 30-day period, disapproves the emergency rule using the standards established by section 2504, it shall notify the Legislature of its disapproval within that same 30-day period, and the Legislature shall have an additional 30 days to pass a joint resolution to void the emergency rule.

If the Legislature is not in session at the time the committee disapproves that emergency rule using the standards of section 2504, it shall notify the Legislative Council and the Legislature shall have 30 days from the date of its next convening in regular session in which to pass a joint resolution to void the emergency rule. If the Legislature does not pass a voiding resolution within that time limit, the emergency rule may continue in effect. If the Legislature passes a joint resolution to void the emergency rule, the emergency rule shall be on that date, void from its promulgation.

§ 2504. Standards

The committee shall disapprove any rule submitted to it for potential review if it finds, after review, that the rule:

1. Noncompliance with legislative purpose. Does not comply with legislative purpose as expressed in currently effective statutory law;
2. Not effective. Does not effectively carry out the purposes which the rule is supposed to accomplish; or
3. Duplication. Duplicates current statute or duplicates material that should be embodied in statute.

Sec. 2. 3 MRSA § 164-A is enacted to read:

§ 164-A. Codification of Administrative Rules

1. **Compilations.** The Director of Legislative Research may establish the Division of Administrative Rule Codification which shall compile, index and publish or require the promulgating agency to publish, in uniform manner as determined by him, all effective rules adopted by each agency. Compilations shall be supplemented or revised as often as necessary, and the director of Legislative Research may publish the supplemented or revised compilation as often as necessary.

2. **Permissible omissions.** The Director of Legislative Research may omit from the compilation any rule the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice stating the general subject matter of the omitted rule and stating how a copy of it may be obtained.

3. **Availability of compilations.** The State Law Librarian shall make compilations available upon request to agencies and officials of this State, free of charge, and to other persons at prices fixed by the State Law Librarian to cover mailing and publication costs.

4. **Standard form.** The Director of Legislative Research shall have the authority to require each agency to conform to a uniform drafting style and system of numbering for its rules and he may, after notice to the affected agency, change or correct any rules filed with him so as to correct the form or numbering, but not the substance, thereof.

Sec. 3. 3 MRSA c. 23 is enacted to read:

CHAPTER 23

LEGISLATIVE OVERSIGHT ACT

§ 501. Short title

This chapter may be referred to as the "Legislative Oversight Act".

§ 502. Definitions

As used in this chapter, unless the context otherwise requires, the following terms shall have the following meanings.

1. Department. "Department" means the Departments of Agriculture, Business Regulation, Conservation, Educational and Cultural Services, Environmental Protection, Finance and Administration, Human Services, Indian Affairs, Inland Fisheries and Wildlife, Manpower Affairs, Marine Resources, Defense and Veterans Services, Mental Health and Corrections, Public Safety, Transportation, the Maine State Retirement System and the Board of Trustees of the University of Maine, including any bureau, agency, office, commission or other body or official which by law is within one of these organizations.

2. Independent agency. "Independent agency" means any agency, bureau, commission, office or official of State Government which is not within or part of one of the departments set forth in subsection 1, and which is not, or is not part of, the Legislature, the judicial branch, a county, a municipality or a special district.

§ 503. Review of departments or independent agencies

Any joint standing committee of the Legislature having jurisdiction over a department or agency pursuant to section 505, shall, every 2nd year commencing in 1979, in the period of time between the adjourning of the first regular session and the convening of the second regular session of the Legislature, conduct a comprehensive review of that department or independent agency and any programs conducted by that department or independent agency.

§ 504. Meetings of the committee

Any joint standing committee conducting a review pursuant to this chapter shall, during the period when the review is being conducted, meet no less than once each month unless otherwise excused by the Legislative Council.

§ 505. Jurisdiction

For the purposes of this chapter, the following joint standing committees of the Legislature shall have jurisdiction over the following departments.

1. Administrative Court. The Joint Standing Committee on Judiciary shall have jurisdiction over the Administrative Court.

2. Advisory Committee on Maine Public Broadcasting. The Joint Standing Committee on Public Utilities shall have jurisdiction over the Advisory Committee on Maine Public Broadcasting.

3. Arborist Examining Board. The Joint Standing Committee on Natural Resources shall have jurisdiction over the Arborist Examining Board.

4. Baxter State Park Authority. The Joint Standing Committee on Natural Resources shall have jurisdiction over the Baxter State Park Authority.

5. Board of Accountancy. The Joint Standing Committee on Business Legislation shall have jurisdiction over the Board of Accountancy.

6. Board of Chiropractic Examination and Registration. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Board of Chiropractic Examination and Registration.

7. Board of Commissioners of the Profession of Pharmacy. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Board of Commissioners of the Profession of Pharmacy.

8. Board of Dental Examiners. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Board of Dental Examiners.

9. Board of Examiners for the Examination of Applicants for Admission to the Bar. The Joint Standing Committee on Judiciary shall have jurisdiction over the Board of Examiners for the Examination of Applicants for Admission to the Bar.

10. Board of Examiners in Physical Therapy. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Board of Examiners in Physical Therapy.

11. Board of Licensure of Administrators of Medical Care Facilities other than Hospitals. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Board of Licensure of Administrators of Medical Care Facilities other than Hospitals.

12. Board of Nursing. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Board of Nursing.

13. Board of Osteopathic Examination and Registration. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Board of Osteopathic Examination and Registration.

14. Board of Registration for Professional Foresters. The Joint Standing Committee on Natural Resources shall have jurisdiction over the Board of Registration for Professional Foresters.

15. Board of Registration in Medicine. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Board of Registration in Medicine.

16. Board of Sanitation, Licensing and Inspection. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Board of Sanitation, Licensing and Inspection.

17. Board of Soil Scientists. The Joint Standing Committee on Business Legislation shall have jurisdiction over the Board of Soil Scientists.

18. Board of Trustees, Group Accident and Sickness or Health Insurance. The Joint Standing Committee on Business Legislation shall have jurisdiction over the Board of Trustees, Group Accident and Sickness or Health Insurance.

19. Board of Trustees of the University of Maine. The Joint Standing Committee on Education shall have jurisdiction over the Board of Trustees of the University of Maine.

20. Board of Visitors; state institutions. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Board of Visitors to state institutions.

21. **Civil Air Patrol.** The Joint Standing Committee on State Government shall have jurisdiction over the Civil Air Patrol.

22. **Coastal Island Trust Commission.** The Joint Standing Committee on Natural Resources shall have jurisdiction over the Coastal Island Trust Commission.

23. **Commissioner of Personnel.** The Joint Standing Committee on State Government shall have jurisdiction over the Commissioner of Personnel.

24. **Department of Agriculture.** The Joint Standing Committee on Agriculture shall have jurisdiction over the Department of Agriculture.

25. **Department of Business Regulation.** The Joint Standing Committee on Business Legislation shall have jurisdiction over the Department of Business Regulation.

26. **Department of Conservation.** The Joint Standing Committee on Natural Resources shall have jurisdiction over the Department of Conservation.

27. **Department of Defense and Veterans Services.** The Joint Standing Committee on Veterans and Retirement shall have jurisdiction over the Department of Defense and Veterans Services.

28. **Department of Educational and Cultural Services.** The Joint Standing Committee on Education shall have jurisdiction over the Department of Educational and Cultural Services.

29. **Department of Environmental Protection.** The Joint Standing Committee on Natural Resources shall have jurisdiction over the Department of Environmental Protection.

30. **Department of Finance and Administration.** The Joint Standing Committee on Appropriations and Financial Affairs shall have jurisdiction over the Department of Finance and Administration.

31. **Department of Human Services.** The Joint Standing Committee on Human Resources shall have jurisdiction over the Department of Human Services.

32. **Department of Indian Affairs.** The Joint Standing Committee on Human Resources shall have jurisdiction over the Department of Indian Affairs.

33. **Department of Inland Fisheries and Wildlife.** The Joint Standing Committee on Fisheries and Wildlife shall have jurisdiction over the Department of Inland Fisheries and Wildlife.

34. **Department of Manpower Affairs.** The Joint Standing Committee on Labor shall have jurisdiction over the Department of Manpower Affairs.

35. **Department of Marine Resources.** The Joint Standing Committee on Marine Resources shall have jurisdiction over the Department of Marine Resources.

36. Department of Mental Health and Corrections. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Department of Mental Health and Corrections.

37. Department of Public Safety. The Joint Standing Committee on Transportation shall have jurisdiction over the Department of Public Safety.

38. Department of Transportation. The Joint Standing Committee on Transportation shall have jurisdiction over the Department of Transportation.

39. Director of State Lotteries. The Joint Standing Committee on State Government shall have jurisdiction over the Director of State Lotteries.

40. District Health Officers. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the District Health Officers.

41. Educational Leave Advisory Board. The Joint Standing Committee on Education shall have jurisdiction over the Educational Leave Advisory Board.

42. Examiners of Podiatrists. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Examiners of Podiatrists.

43. Forestry Appeals Board. The Joint Standing Committee on Taxation shall have jurisdiction over the Forestry Appeals Board.

44. Governor's Committee on Employment of the Handicapped. The Joint Standing Committee on Human Resources shall have jurisdiction over the Governor's Committee on Employment of the Handicapped.

45. Health Facilities Advisory Council. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Health Facilities Advisory Council.

46. Industrial Accident Commission. The Joint Standing Committee on Labor shall have jurisdiction over the Industrial Accident Commission.

47. Inspector of dams and reservoirs. The Joint Standing Committee on Public Utilities shall have jurisdiction over the inspector of dams and reservoirs.

48. Maine-Canadian Exchange Office. The Joint Standing Committee on State Government shall have jurisdiction over the Maine-Canadian Exchange Office.

49. Maine Committee on Problems of the Mentally Retarded. The Joint Standing Committee on Human Resources shall have jurisdiction over the Maine Committee on Problems of the Mentally Retarded.

50. Maine Criminal Justice Planning and Assistance Agency. The Joint Standing Committee on Judiciary shall have jurisdiction over the Maine Criminal Justice Planning and Assistance Agency.

51. **Maine Health Facilities Authority.** The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Maine Health Facilities Authority.
52. **Maine Human Rights Commission.** The Joint Standing Committee on State Government shall have jurisdiction over the Maine Human Rights Commission.
53. **Maine Labor Relations Board.** The Joint Standing Committee on Labor shall have jurisdiction over the Maine Labor Relations Board.
54. **Maine Medical Laboratory Commission.** The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the Maine Medical Laboratory Commission.
55. **Maine Sardine Council.** The Joint Standing Committee on Marine Resources shall have jurisdiction over the Maine Sardine Council.
56. **Maine State Board for Registration of Architects.** The Joint Standing Committee on Business Legislation shall have jurisdiction over the Maine State Board for Registration of Architects.
57. **Maine State Retirement System.** The Joint Standing Committee on Veterans and Retirement shall have jurisdiction over the Maine State Retirement System.
58. **Maine Vocational Development Commission.** The Joint Standing Committee on Education shall have jurisdiction over the Maine Vocational Development Commission.
59. **Municipal Valuation Appeals Board.** The Joint Standing Committee on Taxation shall have jurisdiction over the Municipal Valuation Appeals Board.
60. **Office of Energy Resources.** The Joint Standing Committee on Energy shall have jurisdiction over the Office of Energy Resources.
61. **Passenger Tramway Safety Board.** The Joint Standing Committee on Transportation shall have jurisdiction over the Passenger Tramway Safety Board.
62. **Penobscot Bay and River Pilotage Commission.** The Joint Standing Committee on State Government shall have jurisdiction over the Penobscot Bay and River Pilotage Commission.
63. **Plumbers' Examining Board.** The Joint Standing Committee on Business Legislation shall have jurisdiction over the Plumbers' Examining Board.
64. **Post-secondary Education Commission of Maine.** The Joint Standing Committee on Education shall have jurisdiction over the Post-secondary Education Commission of Maine.
65. **Public Utilities Commission.** The Joint Standing Committee on Public Utilities shall have jurisdiction over the Public Utilities Commission.

66. Saco River Corridor Commission. The Joint Standing Committee on Natural Resources shall have jurisdiction over the Saco River Corridor Commission.

67. Soil and Water Conservation Commission. The Joint Standing Committee on Natural Resources shall have jurisdiction over the Soil and Water Conservation Commission.

68. State Board of Barbers. The Joint Standing Committee on Business Legislation shall have jurisdiction over the State Board of Barbers.

69. State Board of Cosmetology. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the State Board of Cosmetology.

70. State Board of Funeral Service. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the State Board of Funeral Service.

71. State Board of Optometry. The Joint Standing Committee on Health and Institutional Services shall have jurisdiction over the State Board of Optometry.

72. State Board of Registration for Land Surveyors. The Joint Standing Committee on Business Legislation shall have jurisdiction over the State Board of Registration for Land Surveyors.

73. State Board of Registration for Professional Engineers. The Joint Standing Committee on Business Legislation shall have jurisdiction over the State Board of Registration for Professional Engineers.

74. State Board of Social Worker Registration. The Joint Standing Committee on Human Resources shall have jurisdiction over the State Board of Social Worker Registration.

75. State Development Office. The Joint Standing Committee on State Government shall have jurisdiction over the State Development Office.

76. State Employees Appeals Board. The Joint Standing Committee on State Government shall have jurisdiction over the State Employees Appeals Board.

77. State Entomologist. The Joint Standing Committee on Natural Resources shall have jurisdiction over the State Entomologist.

78. State Lottery Commission. The Joint Standing Committee on State Government shall have jurisdiction over the State Lottery Commission.

79. State Personnel Board. The Joint Standing Committee on State Government shall have jurisdiction over the State Personnel Board.

80. State Planning and Advisory Council on Developmental Disabilities. The Joint Standing Committee on Human Resources shall have jurisdiction over the State Planning and Advisory Council on Developmental Disabilities.

81. State Planning Office. The Joint Standing Committee on State Government shall have jurisdiction over the State Planning Office.

§ 506. Report of findings

Any joint standing committee conducting a review pursuant to section 503, shall, no later than the 15th day of January following the commencement of that review, prepare and submit to the Legislature a report of its findings and recommendations and the Joint Standing Committee on Appropriations and Financial Affairs shall act on that report.

This report shall include :

- 1. Programs. Identification of any programs conducted or administered by the department or independent agency ;
- 2. Recommendations. Recommendations as to possible changes, alterations, deletions or abolition of the department or independent agency or any program of that department or independent agency ;
- 3. Appropriation. Recommendations as to levels of appropriations for the department or agency for the next 2 fiscal years ;
- 4. Legislation. Any legislation proposed by the committee to carry out any of its recommendations ; and
- 5. Other information. Any other information which the committee deems appropriate for legislative consideration.

§ 507. Rules and regulations

Any joint standing committee conducting a review may adopt all rules, regulations and procedures which it deems necessary to carry out the purposes of this chapter.

Sec. 4. 5 MRSA § 2352, is repealed and the following enacted in its place :

§ 2352. Taking effect

Each agency rule shall take effect in accordance with Title 1, chapter 31.

Sec. 5. 5 MRSA § 2353 is repealed.

Sec. 6. 5 MRSA § 2355 is enacted to read :

§ 2355. Filing of rules

Each agency shall file in the office of the Director of Legislative Research a copy of each rule adopted or issued by it, including all rules existing on the effective date of this section, certified as a true copy by the agency official authorized by statute to make rules, or by the executive head of an agency authorized to make rules, in the following form :

I, (name and title) hereby certify that
the above is a true copy of (a rule) (rules) adopted by
(name of agency) on (date)
..... Date: (signature)

The term agency, for the purposes of this section, shall be defined under Title 1, section 2501.

STATEMENT OF FACT

This bill provides a comprehensive set of procedures for legislative oversight of executive programs and for legislative review of administrative rules.

The portion of the bill concerning legislative oversight procedures requires each joint standing committee to conduct a comprehensive review of every state department and agency which falls within its jurisdiction. This review is to take place between the first regular session and second regular session of each legislative biennium. In addition, the bill lists all departments and agencies which are assigned to the jurisdiction of each joint standing committee.

The portion of the bill concerning legislative review of administrative rules requires each nonemergency rule proposed by a state agency to be submitted to the Joint Standing Committee on Performance Audit before the rule takes effect. The Performance Audit Committee reviews the rule for conformity to the following standards: Compliance with legislative purpose, effectiveness in carrying out its purposes, nonduplication of current statute and no material in the rule which should be handled by statute instead of rule. If the Performance Audit Committee decides that the rule does not meet one of these standards, it can recommend to the Legislature that the Legislature void the rule by passage of a joint resolution.

The bill also contains procedures for letting an emergency rule take effect immediately, subject to legislative review and possible later voiding by the Legislature.

This bill, therefore, provides a much needed and workable method of ensuring that the Legislature is able to carry out its most important function; setting the policy of State Government.