

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1663

H. P. 1395

House of Representatives, April 13, 1977

On Motion of Mr. Curran of South Portland, referred to Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Shute of Stockton Springs.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Insure Citizen Participation in the Adoption, Amendment and Repeal of Agency Rules and to Provide Legislative Review of Agency Rules.

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

Sec. 1. 5 MRSA § 2351, sub-§ 3, is repealed and the following enacted in its place:

3. Notice of action. Prior to the adoption, amendment or repeal of any rule, the agency shall hold public hearings as required by this chapter.

Sec. 2. 5 MRSA § 2354 is repealed and the following enacted in its place:
§ 2354. Petition for adoption

Any interested person may petition an agency, except the Liquor Commission, requesting the adoption, amendment or repeal of any rule. Each agency shall prescribe by rule the form for such petitions. 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 rule-making procedures in accordance with this chapter.

Sec. 3. 5 MRSA §§ 2355 to 2359 are enacted to read:

§ 2355. When hearings required

1. Agency; rules. An agency shall precede all adoption, amendment or repeal of rules with notice and public hearing unless:

A. The proposed action is procedural rather than substantive;

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;

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

D. The proposed action is published in 3 daily newspapers published in different areas of 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. Exceptions to general hearing requirement. The exceptions to the general hearing requirement set forth in this section 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. 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 the 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;

(2) Either the express terms or an informative summary of the proposed rule action or a description of the subject matter to be discussed;

(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 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. Failure of any person to receive notice of a hearing on a proposed rule action is not grounds for invalidating the resulting action if notice was published in the daily newspapers of the State, as provided in subsection 1.

§ 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 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 representative, may continue or postpone the hearing to such time and place as it determines, but proper notice shall be given of the new time and place.

The officer or a quorum of the board or commission charged by law with ultimate responsibility for rule actions shall be present at the hearing. 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 that 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 adopting, 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.

Emergency action may be permanently adopted by the agency during the 120-day period by proper notice, hearing and publication as required by this chapter.

§ 2359. Legislative review of administrative rules

1. Agency to notify the Legislature. Each agency shall notify the Legislature of any rule-making action it adopts by filing a certified copy of that action with the Secretary of the Senate and the Clerk of the House of Representatives. This notification shall be made at the same time a copy of that action is filed with the Secretary of State. These rule changes shall be referred to the appropriate legislative committee for review.

2. Legislature to review rules. The Legislature, through its committees, shall review each change in agency rules submitted to it to determine if it is within the intent of the authorizing legislation. The committee may conduct public hearings on such rules as it deems necessary. A majority of the committee to which a rule has been referred may recommend to the Legislature such action as may be necessary to ensure that the agency rules comply with the intent of the legislation authorizing those rules.

3. Legislature may pass amendment to or repeal of any rule. The Legislature may pass by resolve, in compliance with the Constitution of Maine, Article IV, Part Third, Section 2, an amendment to or the repeal of any rule.

STATEMENT OF FACT

The purpose of this bill is to formalize procedures whereby citizens may participate in the formulation of agency rules and to provide for legislative review of agency rule-making actions, including amendment or repeal of a rule the Legislature finds does not sufficiently carry out the intent of the statute authorizing the rule.