

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1779

H. P. 1565

House of Representatives, May 11, 1977

Reported by Mrs. Berube from Committee on Performance Audit and
printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Require a Cost-Benefit Evaluation of Government Regulation.

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

Sec. 1. 5 MRSA c. 17 is enacted to read:

CHAPTER 17

COST-BENEFIT EVALUATION OF
REGULATIONS

§ 401. Short title

This chapter may be cited as the "Regulatory Cost-Benefit Evaluation Act."

§ 402. Declaration of policy and purpose

The Legislature declares that it is the policy of the State to prevent the imposition of unreasonable costs on the public from state government programs and to ensure that each regulation of state departments and agencies will be adopted, interpreted and administered so that the direct and indirect costs to the public resulting from the regulation will not be unreasonable and will bear a reasonable relationship to and be commensurate with the benefits derived therefrom. To that end, it is the purpose of this chapter to establish a means for determining the costs, both direct and indirect, to the public of any proposed regulation that may have a measurable impact on costs and to require that such proposed regulation shall provide benefits that bear a reasonable relationship to the costs.

§ 403. Definitions

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

1. **Agency.** "Agency" means any state department or any state agency, office, board, commission or authority.
2. **Benefits.** "Benefits" includes, but is not limited to:
 - A. Short and long-term benefits to the public or any segment of the public;
 - B. Benefits which may be quantified or measured in some appropriate manner; and
 - C. Benefits which may not lend themselves to appropriate measurement or quantification, but which nevertheless may be deemed to be of significance to consumers, the public or any segment of the public.
3. **Cost-benefit evaluation.** "Cost-benefit evaluation" means a technique for evaluating the effectiveness of regulations in terms of cost.
4. **Costs.** "Costs" includes, but is not limited to:
 - A. Short and long-term costs to the public or any segment of the public;
 - B. Costs which may be quantified or measured in some appropriate manner; and
 - C. Costs which may not lend themselves to appropriate measurement or quantification, but which nevertheless may be deemed to be of significance to consumers, to the public or any segment of the public.
5. **Proposed regulation.** "Proposed regulation" means a proposal for a new regulation, for an amendment to an existing regulation or for repealing an existing regulation.
6. **Regulation.** "Regulation" means a regulation, standard or policy which implements or makes specific the law enforced or administered by an agency, or which governs the organization or procedures of the agency. The term means either a single regulation or a set of related regulations.

§ 404. Cost-benefit evaluation of regulations

1. **Draft; contents.** In furtherance of the purpose and policy of this chapter and except as otherwise provided in this chapter, every agency shall prepare in conjunction with every proposed regulation which may have a measurable impact on costs to the public or any segment of the public a draft of a cost-benefit evaluation setting forth:
 - A. The reasonably foreseeable impact on costs to the public or any segment of the public, both direct and indirect, that would result from such proposal;
 - B. The reasonably foreseeable benefits to the public or any segment of the public to be derived from the proposal;

C. An evaluation of:

- (1) The relationship between the benefits and the costs; and
- (2) The net effect which the benefits and costs may reasonably be expected to have on the public or any segment of the public; and

D. Reasonable alternatives to the proposal, the benefits and cost of the alternatives and an evaluation of the relationship of the benefits and cost of the alternatives.

2. Adoption of proposed regulations. The following provisions shall apply to every proposed regulation subject to the requirements of subsection 1.

A. Whenever an agency publishes notice of a public hearing on such a regulation, the notice shall include a statement of where the full text of the draft of the cost-benefit evaluation may be reviewed and obtained without cost. All administrative procedures and public participation which are required by law and which relate to the adoption of proposed regulations shall include a consideration of the draft of the cost-benefit evaluation.

B. Prior to adopting a proposed regulation, an agency shall take affirmative action to obtain data and comments on the draft of each cost-benefit evaluation of a regulation from other appropriate federal, state or local agencies, from legislative committees having jurisdiction over the subject matter of the proposal and from representative private organizations which would be directly affected by the proposed regulation or which may have a basis for evaluation of the benefits or costs to the public or any segment of the public.

C. An agency, after consultation with the Department of Audit, shall prepare a final cost-benefit evaluation of each regulation on the basis of data and information before it. The final evaluation shall include a statement of findings and reasons upon which the evaluation is based. The agency shall, upon request and at no cost, make available to any individual the full text of the final cost-benefit evaluation.

§ 405. Judicial review of regulations

Whenever there is judicial review of any adopted regulation, as otherwise prescribed by law, such review may include a consideration of whether the regulation was promulgated in compliance with this chapter and of whether the regulation is a reasonable exercise of agency authority in light of the conclusions reached in the evaluation of such regulation under this chapter and in light of other pertinent information relating to the costs and benefits of the regulation.

§ 406. Standards

The Department of Audit shall establish and provide to each agency general guidelines for carrying out cost-benefit evaluations under this chapter. Such guidelines may include the types and sources of data which should be collected, various techniques which can be used to quantify or otherwise

indicate costs and benefits and various methods which can be used to evaluate the relationship between costs and benefits.

The department may conduct training seminars for the purpose of informing state employees about the theory and methods involved in cost-benefit evaluations.

§ 407. Emergency procedures

If, in the opinion of the agency, preparation of a draft of a cost-benefit evaluation prior to the publication of a proposed regulation subject to the requirements of section 404, subsection 1, would so delay promulgation of a final regulation by an agency as to present a substantial risk to the health or safety of persons or to the preservation and protection of valuable property, the proposed regulation may be published and final action taken on the regulation without timely compliance with section 404; provided that the agency shall have complied with section 404 within 60 days after final action on the regulation.

Sec. 2. Effective date. This Act shall become effective 180 days after approval.

STATEMENT OF FACT

This new draft enacts a new chapter in Title 5 which requires each state agency to prepare an evaluation of the costs and benefits of regulations adopted by the agency.

Section 402 states that the purpose of this legislation is to "prevent the imposition of unreasonable costs on the public from state government programs."

Section 403 defines the key terms in the bill, including, most notably, "benefits" and "costs."

Section 404 requires each agency to complete a draft of a cost-benefit evaluation for a regulation so that this draft can be considered prior to the adoption of the regulation. This section also provides that when the agency publishes a notice of public hearing on the regulation, the notice must include the place where the draft evaluation may be reviewed and obtained without cost. In addition, after a final cost-benefit evaluation has been prepared, the agency is required to make the evaluation available at no cost to any person who requests it. The agency is supposed to consult with the Department of Audit and various governmental and private agencies before it prepares its final cost-benefit evaluation.

Section 405 provides that judicial review of any adopted regulation may include review of whether the regulation was made in compliance with this legislation and of whether the regulation is a reasonable exercise of agency authority.

Section 406 requires the Department of Audit to establish and provide general guidelines for carrying out cost-benefit evaluations. This section also authorizes the department to conduct training seminars for the purpose of informing state employees about the theory and methods involved in cost-benefit analyses.

Section 407 accounts for emergency situations by providing that when a delay in the adoption of a regulation might result in a substantial risk to the health and safety of persons or to the preservation and protection of valuable property, an agency can adopt the regulation before it initiates or completes the cost-benefit evaluation.

The legislation will become effective 180 days after it is approved.