

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2189

H. P. 2229

House of Representatives, March 13, 1978

Referred to Committee on Performance Audit and sent up for concurrence.

EDWIN H. PERT, Clerk

Presented by Mr. Wilfong of Stow.

Cosponsor: Mr. Palmer of Nobleboro.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

AN ACT to Revise the Maine Sunset Law and State Agency Rules Law.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Sunset Act requires legislative action prior to May 1, 1978; and

Whereas, certain changes in the Maine Sunset Act are necessary to eliminate inconsistencies in that Act; and

Whereas, certain changes in the Maine Sunset Act will facilitate its implementation; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 3 MRSA § 505, as enacted by PL 1977, c. 554, § 1, is repealed and the following enacted in its place:

§ 505. Analysis by the Legislative Finance Office

1. **Criteria for analysis.** For each department and independent agency which has submitted a justification report, the Legislative Finance Office shall evaluate the analysis in the report and may conduct its own analysis which shall include, but shall not be limited to, an analysis of the extent to which the objectives of the department or independent agency have been reached.

2. **Submittal of analyses.** The Legislative Finance Officer shall submit to the Legislature the evaluations and analyses, prepared pursuant to this section, of the departments and independent agencies listed in section 507, according to the following schedule: Group A, no later than October 31, 1979; Group B, no later than October 31, 1981; Group C, no later than October 31, 1983; Group D, no later than October 31, 1985; and Group E, no later than October 31, 1987.

Sec. 2. 3 MRSA § 507, as enacted by PL 1977, c. 554, § 1, is repealed and the following enacted in its place:

§ 507. Justification and termination dates

For the following departments and independent agencies, the justification or termination schedule shall be as provided in this section.

1. **Group A departments.** The justification for the programs of the following Group A departments shall be reviewed by the Legislature no later than June 30, 1980:

- A. Department of Transportation;
- B. Department of Agriculture;
- C. Department of Public Safety;
- D. Department of Defense and Veterans Services; and
- E. Department of the Secretary of State.

2. **Group A independent agencies.** Unless continued or modified by law, the following Group A independent agencies shall terminate, not including the grace period, no later than June 30, 1980. However, the Maine Turnpike Authority shall not terminate, but shall be reviewed by the Legislature no later than June 30, 1980:

- A. Passenger Tramway Safety Board;
- B. Maine Turnpike Authority;
- C. Penobscot Bay and River Pilotage Commission;

- D. State Board of Registration for Professional Engineers;
- E. State Board of Registration for Land Surveyors;
- F. Land Damage Board;
- G. Blueberry Industry Advisory Board;
- H. Seed Potato Board;
- I. Maine Milk Commission;
- J. State Harness Racing Commission;
- K. Maine Agricultural Bargaining Board;
- L. Board of Veterinary Medicine;
- M. Maine Milk Tax Committee;
- N. Maine Dairy and Nutrition Council Committee;
- O. Board of Pesticide Control;
- P. State Planning Office;
- Q. Maine-Canadian Exchange Office; and
- R. State Lottery Commission.

3. Group B departments. The justification for the programs of the following Group B departments shall be reviewed by the Legislature no later than June 30, 1982:

- A. Department of Business Regulation; and
- B. Department of the Attorney General.

4. Group B independent agencies. Unless continued or modified by law, the following Group B independent agencies shall terminate, not including a grace period, no later than June 30, 1982. However, the Maine State Housing Authority, the Penobscot Indian Housing Authority, the Pleasant Point Passamaquoddy Indian Housing Authority and the Indian Township Passamaquoddy Indian Housing Authority shall not terminate, but shall be reviewed by the Legislature no later than June 30, 1982:

- A. Board of Accountancy;
- B. Arborist Examining Board;
- C. Maine State Board for Registration of Architects;
- D. Board of Examiners for the Examination of Applicants for Admission to the Bar;

- E. State Board of Barbers;
- F. State Board of Cosmetology;
- G. Plumbers' Examining Board;
- H. Real Estate Commission;
- I. Maine Athletic Commission;
- J. Electricians' Examining Board;
- K. Oil Burner Men's Licensing Board;
- L. Maine Criminal Justice Planning and Assistance Agency;
- M. Maine State Housing Authority;
- N. Penobscot Indian Housing Authority;
- O. Pleasant Point Passamaquoddy Indian Housing Authority; and
- P. Indian Township Passamaquoddy Indian Housing Authority.

5. Group C departments. The justification for the programs of the following Group C departments shall be reviewed by the Legislature no later than June 30, 1984:

- A. Department of Conservation;
- B. Department of Inland Fisheries and Wildlife;
- C. Department of Environmental Protection;
- D. Department of Marine Resources; and
- E. Department of Manpower Affairs.

6. Group C independent agencies. Unless continued or modified by law, the following Group C independent agencies shall terminate, not including a grace period, no later than June 30, 1984. However, the Baxter State Park Authority and the Mountain Resorts Airport Authority shall not terminate, but shall be reviewed by the Legislature no later than June 30, 1984:

- A. State Board of Registration for Professional Foresters;
- B. Baxter State Park Authority;
- C. Coastal Island Trust Commission;
- D. Saco River Corridor Commission;
- E. Soil and Water Conservation Commission;

- F. Inspector of Dams and Reservoirs;**
- G. Board of Certification of Water Treatment Plant Operators;**
- H. Maine Sardine Council;**
- I. Atlantic Sea Run Salmon Commission;**
- J. Mountain Resorts Airport Authority;**
- K. Public Utilities Commission;**
- L. State Development Office;**
- M. Office of Energy Resources;**
- N. Office of CETA Planning and Coordination; and**
- O. Maine Labor Relations Board.**

7. Group D departments. The justification for the programs of the following Group D departments shall be reviewed by the Legislature no later than June 30, 1986:

- A. Department of Human Services;**
- B. Department of Indian Affairs; and**
- C. Department of Mental Health and Corrections.**

8. Group D independent agencies. Unless continued or modified by law, the following Group D independent agencies shall terminate, not including a grace period, no later than June 30, 1986. However, the Maine Health Facilities Authority shall not terminate, but shall be reviewed by the Legislature no later than June 30, 1986:

- A. Board of Chiropractic Examination and Registration;**
- B. Board of Dental Examiners;**
- C. State Board of Funeral Services;**
- D. State Board of Licensure of Administrators of Medical Care Facilities other than Hospitals;**
- E. Board of Registration in Medicine;**
- F. State Board of Nursing;**
- G. State Board of Optometry;**
- H. Board of Osteopathic Examination and Registration;**
- I. Board of Commissioners of the Profession of Pharmacy;**

- J. Board of Examiners in Physical Therapy;**
- K. Examiners of Podiatrists;**
- L. State Board of Social Worker Registration;**
- M. State Board of Examiners of Psychologists;**
- N. Board of Examiners on Speech Pathology and Audiology;**
- O. Board of Hearing Aid Dealers and Fitters;**
- P. Maine Health Facilities Authority;**
- Q. Maine Medical Laboratory Commission;**
- R. State Planning and Advisory Council on Developmental Disabilities;**
- S. Board of Visitors (to the state institutions);**
- T. Maine Committee on Problems of the Mentally Retarded;**
- U. Industrial Accident Commission;**
- V. Governor's Committee on Employment of the Handicapped;**
- W. Division of Community Services;**
- X. Maine Commission for Women; and**
- Y. Maine Human Rights Commission.**

9. Group E departments. The justification for the programs of the following Group E departments shall be reviewed by the Legislature no later than June 30, 1988:

- A. Department of Finance and Administration;**
- B. Department of the Treasurer of State;**
- C. Department of Audit;**
- D. Department of Personnel;**
- E. Department of Educational and Cultural Services;**
- F. Maine State Retirement System;**
- G. Board of Trustees of the University of Maine; and**
- H. Board of Trustees of the Maine Maritime Academy.**

10. Group E independent agencies. Unless continued or modified by law, the following Group E independent agencies shall terminate, not including the grace

period, no later than June 30, 1988. However, the Board of Emergency Municipal Finance, the Maine Guarantee Authority and the Maine Municipal Bond Bank shall not terminate but shall be reviewed by the Legislature no later than June 30, 1988:

- A. Board of Emergency Municipal Finance;
- B. Maine Guarantee Authority;
- C. Maine Municipal Bond Bank;
- D. Municipal Valuation Appeals Board;
- E. Land Classification Appeals Board;
- F. State Liquor Commission;
- G. Capitol Planning Commission;
- H. Board of Trustees, Group Accident and Sickness or Health Insurance;
- I. Office of State Employee Relations;
- J. State Employees Appeals Board;
- K. Educational Leave Advisory Board;
- L. Maine Vocational Development Commission;
- M. Post-secondary Education Commission of Maine;
- N. Advisory Committee on Maine Public Broadcasting;
- O. State Government Internship Program Advisory Committee;
- P. State Historian;
- Q. Historic Preservation Commission; and
- R. Maine State Commission on the Arts and the Humanities.

Sec. 3. 5 MRSA c. 308, as enacted by PL 1977, c. 566, is repealed.

Sec. 4. 5 MRSA c. 377 is enacted to read:

CHAPTER 377

STATE AGENCY RULES

§ 11101. 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 the rules are renewed by statute.

§ 11102. 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 the rule, and shall include any body of State Government authorized by law to adopt rules, 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, the Governor, the courts, including the Administrative Court, the University of Maine, the Maine Maritime Academy, school districts, special purpose districts or municipalities, counties or other political subdivisions of the State.

2. **Committee report.** “Committee report” shall mean the report prepared by a joint standing committee pursuant to this chapter. At a minimum, the report shall include the text of the rule and a brief description of it; an evaluation 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, the criteria shall include the following:

- A. Whether the rule is consistent with and necessary to the intent of the legislation which authorized its promulgation;
- B. Are the effects of the rule suitable, including its benefits and costs, including costs of compliance and of administration; and
- C. 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.**

- A. “Rule” means the whole or any part of every regulation, standard, code, statement of policy, or other agency statement of general applicability, including the amendment, suspension or repeal of any prior rule that is or is intended to be judicially enforceable and implements, interprets or makes specific the law administered by the agency, or describes the procedures or practices of the agency.

B. The term does not include:

- (1) Policies or memoranda concerning only the internal management of an agency or the State Government and not judicially enforceable;
- (2) Advisory rulings issued under chapter 375, subchapter III;
- (3) Decisions issued in adjudicatory proceedings; or
- (4) Any form, instruction or explanatory statement of policy which in itself is not judicially enforceable and which is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges.

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

§ 11103. Assignment of rules to standing committees

Not later than September 1, 1978, every administering agency shall submit to the Legislature a copy of each rule promulgated by it which is in effect on July 15, 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. Every agency shall submit to the Legislature on January 1, 1979, any rules or amendments of rules adopted after July 15, 1978, and before January 1, 1979.

Each rule in effect on January 1, 1979, or taking effect on a subsequent date, 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, 1979, 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, 1984. The expiration schedule shall, to the extent possible, schedule the expiration date of these rules so as to provide an equal workload for committee review in each of the 5 years between January 1, 1979 and January 1, 1984.

The Legislature shall approve by statute an expiration schedule for each rule in effect on January 1, 1979. The expiration schedule shall provide for the expiration of every rule not later than January 1, 1984.

§ 11104. Automatic expiration of rules

Every rule in effect on January 1, 1979, shall expire January 1, 1984, unless terminated earlier by the administering agency or by statute.

Every rule taking effect after January 1, 1979, 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 the termination and promulgation is to avoid automatic or statutory termination of the rule. The Attorney General shall sue to stop the 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.

§ 11105. 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 11103. 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.

§ 11106. Administering and other agencies to cooperate

All state agencies shall cooperate in the conduct of this chapter. This 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.

§ 11107. 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.

§ 11108. Savings clause

The provisions of this chapter shall not apply to any rule where the 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 federal grant-in-aid programs to determine whether participation will be affected by this chapter. Each agency shall give timely notification, in writing, to the Legislature of the nature of the effect.

Sec. 5. Legislative Finance Office; positions authorized.

An additional 3 positions are authorized in the Legislative Finance Office to carry out the intent of the Maine Sunset Act. The breakdown shall be as follows:

1978-79

LEGISLATIVE DEPARTMENT

Legislature

(3)

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

FISCAL NOTE

For the Maine Sunset Law bill, 3 additional positions are authorized in the Legislative Finance Office. In 1978-79, these positions will be funded from currently appropriated funds. For additional positions necessary for State Agency Rules Law, funds will be provided from the legislative account.

STATEMENT OF FACT

This bill makes the following changes in the Maine Sunset Act passed by the 107th Legislature.

1. Analysis of agency justification reports will be done by the Legislative Finance Office rather than the Department of Audit. The program review and evaluation staff function was transferred from the Department of Audit to the Legislative Finance Office by the 107th Legislature.
2. To eliminate duplication of effort, the mandatory staff evaluation of

regulatory functions is eliminated. This same kind of analysis can be conducted under the mandate established in "An Act to Provide for Legislative Review and Automatic Termination of State Agency Rules," 1977, c. 566. Every agency will still be required under the Sunset Law to submit a justification report for each program for which it is responsible. This report, which will be analyzed by the Legislative Finance Office, will address the regulatory as well as all other objectives of each program.

3. The schedule of review and terminations of independent agencies is modified as follows:

A. Twenty-four independent agencies have been added so that all such bodies are treated consistently;

B. Independent agencies which are included in a department for administrative purposes have been scheduled for Sunset review at the same time as that department;

C. Independent agencies which deal with the same substantive areas of government are grouped together;

D. Five bodies included as independent agencies are deleted because they are not statutorily designated independent state agencies;

E. Some independent agencies have been moved from one group to another to even out the annual workload in light of the other changes indicated above.

4. An additional 3 positions are authorized in the Legislative Finance Office to carry out the staff work mandated by the Maine Sunset Act.

This amendment will provide for the coordination of this Act with PL 1977, c. 554, the periodic justification of state agency programs and independent agencies, which will begin reviews in 1979 and the Administrative Procedure Act which becomes effective on July 1, 1978. It will provide for the development of administrative practices to carry out an orderly, effective review of agency rules.