

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 224

H. P. 177

House of Representatives, January 30, 1979

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

EDWIN H. PERT, Clerk

Presented by Mr. Connolly of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Simplify and Clarify the Maine Administrative Procedure Act.

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

Sec. 1. 5 MRSA § 8002, sub-§ 9, ¶ A, as amended by PL 1977, c. 694, § 30, is further amended by adding at the end a new sentence to read:

All rules promulgated after July 1, 1979 shall use plain and clear English, which can be readily understood by the public.

Sec. 2. 5 MRSA § 8054, sub-§ 2, as enacted by PL 1977, c. 551, § 3, is amended to read:

2. Agency findings. Any emergency rule shall include, **with specificity**, the agency's findings with respect to the existence of an emergency, and such findings shall be subject to judicial review under section 8058. **No emergency shall be found to exist when the primary cause of the emergency is delay caused by the agency involved.**

Sec. 3. 5 MRSA § 8055, sub-§ 3, as enacted by PL 1977, c. 551, § 3, is amended by adding at the end a new sentence to read:

Whenever a petition to adopt or modify a rule is submitted by 10 or more persons, the agency shall initiate appropriate rulemaking proceedings within 60 days after receipt of the petition.

Sec. 4. 5 MRSA § 9059, sub-§ 3, as enacted by PL 1977, c. 551, § 3, is amended by adding after the first sentence a new sentence to read:

The agency shall make copies of the record, copies of recordings or transcriptions of recordings available free of charge to any person whose legal rights, duties or privileges were at issue in the hearing, when that person is represented by a legal aid society or court-appointed counsel, has been found to be indigent by an appropriate court or proves to the agency that he is unable to purchase the desired materials.

STATEMENT OF FACT

This bill will accomplish 4 results.

First, since it is the purpose of the Maine Administrative Procedure Act to facilitate public participation in the process of rule making, the Act is amended to assure that the use of legal and technical language is minimized and that, to the maximum extent feasible, plain and clear English is used.

The 2nd purpose of the bill is to limit an agency's ability to circumvent the procedural protections of the Maine Administrative Procedure Act by declaring the existence of an emergency. This bill requires specificity in identifying an emergency and prohibits the declaration of an emergency where the sole reason is administrative expediency.

Section 3 of this bill requires an agency to give public notice and hold a public hearing whenever they receive a petition to adopt or modify a rule from 10 or more individuals.

Finally, this bill guarantees that no individual whose rights, duties or privileges were at issue in a Maine Administrative Procedure Act adjudicatory hearing will be denied a copy of the record, copies of recordings or transcriptions of recordings, solely because of an inability to afford the items in question.