

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-522)
109TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1248, L.D. 1504, Bill, "AN ACT to Revise and Correct Provisions of the Administrative Procedure Act."

Amend the bill by inserting after section 2 the following:

'Sec. 3. 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, to the maximum extent feasible, as determined by the affected agency, use plain and clear English, which can be readily understood by the public. in that part designated "§8053.

Further amend the bill in section 4, /subsection 5, paragraph by striking out in the first sentence the following:

"single,"

Further amend the bill in section 4, /subsection 5, paragraph in that part designated "§8053.

B, by inserting at the end the following new sentence:

'Notice of proposed rules affecting only a particular locality or region need only be published in the designated newspapers having general circulation in the area affected.'

Further amend the bill by inserting after section 4 the following:

'Sec. 5. 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. 6. 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 100 or more persons, the agency shall initiate appropriate rule-making proceedings within 60 days after receipt of the petition.'

Further amend the bill in section 6 by striking out everything and inserting in its place the following:

'Sec. 6. 5 MRSA §8056, sub-§3, ¶A-1 is enacted to read:

A-1. Compile, edit, index and arrange for publication and distribution all current rules of state agencies. Compilations shall be supplemented or revised at least annually; and'

Further amend the bill by inserting before the statement of fact the following:

'Sec. 8. 5 MRSA §9055, as enacted by PL 1977, c. 551, §3 is amended to read:

§9055. Ex parte communications; separation of functions

1. Communication prohibited. In any adjudicatory proceeding, no agency members authorized to take final action or presiding officers designated by the agency to make findings of fact and conclusions of law shall communicate directly or indirectly, in connection with any issue of fact, law or procedure, with any person-party

or other persons legally interested in the outcome of the proceeding, except upon notice and opportunity for all parties to participate.

2. Communication permitted. This section shall not prohibit any agency member or other presiding officer described in subsection 1 from:

A. Communicating in any respect with other members of the agency or other presiding officers; or

B. Having the aid or advice of those members of his own agency staff, counsel or consultants retained by the agency who have not participated and will not participate in the agency-adjudicatory proceeding in an advocate capacity.'

Further amend the bill by renumbering the sections to read consecutively.

Statement of Fact

This amendment:

1. Requires rules to be written in simple English (amendment to Title 5, section 8002);

2. Permits notice to be published in a local or regional newspaper for rules affecting only a locality or a region (amendment to Title 5, section 8053);

3. Requires specificity in identifying an emergency for emergency rulemaking by an agency, and prohibits the declaration of an emergency where the primary cause of the emergency is delay caused by the agency (amendment to Title 5, section 8054);

4. Requires an agency to give notice and hold a hearing whenever it receives a petition to adopt or modify a rule from 100 or more persons (amendment to Title 5, section 8055);

5. Corrects language in Title 5, section 8056; and

6. Limits the scope of the prohibition of communications between agency decisionmakers in adjudicatory proceedings and any party or persons legally interested in the outcome of the proceeding. The intent of the amendment is to continue to prohibit such communications, direct or indirect, with persons who now or in the foreseeable future may be affected by the decision, that is, persons who may wish to influence the decision for their own benefit. The statute as amended would permit communications with disinterested persons or sources, such as published reference materials and discussions of a general subject at a professional conference, without reference to the details of a particular case.