

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1504

H. P. 1248

House of Representatives, March 28, 1979

On Motion of Mrs. Kany of Waterville, referred to the Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Kany of Waterville.

Cosponsors: Mr. Connolly of Portland, Ms. Brown of Gorham and Mr. Cloutier of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Revise and Correct Provisions of the Administrative Procedure Act.

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

Sec. 1. 4 MRSA § 175, as amended by PL 1975, c. 346, § 4, is repealed and the following enacted in its place:

§ 175. Fees of District Courts

The Supreme Judicial Court shall have the authority to prescribe rules establishing the fees of the District Courts.

Sec. 2. 4 MRSA § 555, as last amended by PL 1973, c. 355, § 1, is repealed and the following enacted in its place:

§ 555. Fee schedule

The Supreme Judicial Court shall have the authority to prescribe rules establishing the fees of clerks of the judicial courts.

Sec. 3. 5 MRSA § 8052, sub-§ 6 is enacted to read:

6. Effective date. No rule, except emergency rules adopted under section 8054, shall become effective until at least 5 days after filing with the Secretary of State under section 8056, subsection 1, paragraph B.

Sec. 4. 5 MRSA § 8053, as last amended by PL 1977, c. 694, § 34-B, is repealed and the following enacted in its place:

§ 8053. Notice

1. Notice of rulemaking without hearing. At least 20 days prior to the adoption of any rule without hearing, the agency shall deliver or mail written notice to:

- A. Any person specified by the statute authorizing the rulemaking;**
- B. Any person who has filed within the past year a written request with the agency for notice of rulemaking;**
- C. Any trade, industry, professional, interest group or regional publication that the agency deems effective in reaching the persons affected; and**
- D. The Secretary of State, for publication in accordance with subsection 5.**

Notification to subscribers under paragraph B shall be by mail or otherwise in writing to the last address provided to the agency by that person.

2. Notice of rulemaking hearing. When an agency holds a public hearing prior to adoption of a rule, notice of the hearing shall be given in the manner described in subsections 1 and 5, using the date of the hearing to calculate the time periods involved.

3. Contents of notice. The notice shall:

- A. Refer to the statutory authority under which the adoption of the rule is proposed;**
- B. State the time and place of any scheduled public hearing or state the manner in which a hearing may be requested;**
- C. State the manner and time within which data, views or arguments may be submitted to the agency for consideration, whether or not a hearing is held; and**
- D. If possible, contain the express terms of the proposed rule or otherwise describe the substance of the proposed rule, stating the subjects and issues involved and indicate where a copy of the proposed rule may be obtained.**

4. Fee schedule. The agency may establish a fee schedule for notice under subsection 1, paragraph B, imposing a cost reasonably related to the actual expense entailed.

5. Publication. The Secretary of State shall:

- A. Arrange for the weekly publication of a single, consolidated notice of rulemaking of all state agencies, which shall also include a brief explanation to assist the public in participating in the rulemaking process. Notice of each rulemaking proceeding shall be published twice, 14 days apart. The 2nd notice shall be published at least 3 and not more than 10 days prior to the public**

hearing on the proposed rule or the same period prior to adoption if no public hearing is scheduled.

B. Designate certain newspapers, which together have general circulation throughout the State, as papers of record for the purpose of publishing notice under paragraph A.

C. Designate one weekday as rules day for publication of notices or rulemaking as set forth in this subsection.

D. Be reimbursed for the cost of publication of rulemaking notice by the agencies proposing the rulemaking. The total costs of each consolidated publication will be prorated by the Secretary of State among all agencies submitting notice for a particular week.

5. 5 MRSA § 8056, sub-§ 3, ¶ A, as enacted by PL 1977, c. 551, § 3, is amended to read:

A. Maintain and make available at his office, for inspection at no charge and for copying or purchase at actual cost, current copies of complete rules for all agencies filed in accordance with subsection 1, paragraph B; and

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. Computations shall be supplemental or revised at least annually; and

Sec. 7. 5 MRSA § 8057, sub-§ 2, as enacted by PL 1977, c. 551, § 3, is amended by inserting at the end the following new sentence:

Rules in effect prior to July 1, 1978, become void and of no legal effect on December 31, 1979, unless filed with the Secretary of State in accordance with section 8056, subsection 1, paragraph B.

STATEMENT OF FACT

The purposes of this bill are:

1. To allow greater flexibility in setting the fees of the District Courts and the judicial courts;

2. To address the problem of public notice of newly adopted rules by requiring the rules to be on file in a central place for at least 5 days prior to their being enforced against the public;

3. To increase public awareness of and participation in state agency rulemaking activities by requiring weekly publication of a consolidated notice statement in several newspapers of the State;

4. To clarify the method of giving notice to the public and interested persons of agency rulemaking and establishes a centralized newspaper publication of rulemaking notices; and

5. To clarify the status of the pre-APA rules. Specifying a deadline for filing will encourage agencies to file and will allow the Legislature to begin planning for review of agency rules under the state agency rules law. Granting a grace period until December 31, 1979, is similar to the approach taken in Title 5, section 8057, subsection 1.