

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-892)
109TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1768, L.D. 1890, Bill,
"AN ACT to Clarify the Standard of Review for Agency Rulemaking."

Amend the Bill by striking out all of the title and inserting in its place the following: 'AN ACT to Clarify the Standard of Review for Agency Rulemaking and to Clarify Compliance Requirements with Conflicting Rules.'

Further amend the Bill by striking out everything after the enacting clause and inserting in its place the following:

'Sec. 1. 5 MRSA §8058, sub-§1, as enacted by PL 1977, c. 551, §3, is amended by adding, after the 2nd sentence, 2 new sentences to read:

If the court finds that the rule was properly adopted and not in excess of the agency's rule-making authority, its substantive review of that rule shall be to determine whether the rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. The phrase "otherwise not in accordance with law" shall apply only to the review authorized in the preceding sentence and shall not be construed so as to limit or replace in any way section 8003.

Sec. 2. 5 MRSA §8059 is enacted to read:

§8059. Inconsistent rules

When rules are inconsistent or conflict with other rules, then compliance with any such inconsistent or conflicting rule shall be deemed to be compliance with all such inconsistent or conflicting rules.'

Statement of Fact

This amendment makes several changes to the bill.

1. The title of the bill is changed.

2. The language of the bill is changed to provide that the court's substantive review of a rule shall be to determine whether the rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. It is the express intent of the Legislature that these standards for review are independent of any language in or interpretation of the standards of review specified for agency rulemaking in the Federal Administrative Procedure Act, United States Code, Title 5, Section 706.

3. A new provision is added which permits the public to follow either rule where there are inconsistent or conflicting rules.