

MAINE STATE LEGISLATURE

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(Governor's Bill)
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1890

H. P. 1768

House of Representatives, January 25, 1980

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

EDWIN H. PERT, Clerk of the House

Presented by Mrs. Berube of Lewiston.

Cosponsors: Mr. LaPlante of Sabattus, Mr. Tuttle of Sanford and Mr. Fowlie of Rockland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT to Clarify the Standard of Review for Agency Rulemaking.

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

5 MRSA § 8058, sub-§ 1, as enacted by PL 1977, c. 551, § 3, is amended by adding after the second sentence a new sentence 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 is limited to whether the rule is arbitrary, capricious or an abuse of discretion.

STATEMENT OF FACT

The purpose of the bill is to clarify the standard of review for agency rulemaking. As presently written, Title 5, section 8058, subsection 1, clearly provides for review of the procedure by which a rule has been adopted and also allows a determination of whether the rule is within the scope of the issuing agency's authority. It is not clear, whether, and to what extent, the court has the authority to review the substance of the rule. The standard specified in the bill is the traditional standard for review of agency actions and is the same standard of review specified for agency rulemaking in the Federal Administration Procedure Act, 5 U.S.C. § 706.