

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1274

H. P. 1071

House of Representatives, March 12, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Tarbell of Bangor.

Cosponsors: Representative Hobbins of Saco, Representative Bell of Paris and Representative Lisnik of Presque Isle.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Clarify the Administrative Procedure Act.

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

Sec. 1. 5 MRSA § 8052, sub-§ 2, as enacted by PL 1977, c. 551, § 3, is amended by adding at the end a new sentence to read:

Any public hearing shall be held and conducted by at least a quorum of the rule-making agency.

Sec. 2. 5 MRSA § 8052, sub-§ 4, as enacted by PL 1977, c. 551, § 3, is further amended by adding at the end a new sentence to read:

The rules promulgated by the agency shall be based on the record which consists of proposed rules, the agency's statement of the basis and purpose of the rules, evidence, exhibits and other matters presented or considered.

Sec. 3. 5 MRSA § 8052, sub-§ 5, as enacted by PL 1977, c. 551, § 3, is repealed and the following enacted in its place:

5. Written statement adopted. At the time a proposed rule is published, the agency shall adopt a written statement explaining the factual and policy basis for the proposed rule.

Sec. 4. 5 MRSA § 8053, sub-§ 3-A is enacted to read:

3-A. Copies of proposed rules available upon request. At least 20 days prior to hearing on any proposed rule and at least 20 days prior to the adoption of any rule without a hearing, the agency shall make copies of the proposed rule available to persons upon request.

Sec. 5. 5 MRSA § 8056, sub-§ 6 is enacted to read:

6. Attorney General review. The review required in subsection 1 shall not be performed by any person involved in the formulation or drafting of the proposed rule.

Sec. 6. 38 MRSA § 345, sub-§ 1, as enacted by PL 1977, c. 300, § 9, is amended to read:

1. Hearings. Except as provided in section 347 and the Maine Administrative Procedure Act, Title 5, chapter 375, whenever the board or Department of Environmental Protection is required or empowered to conduct a hearing pursuant to any provisions of law, such hearing may be held and conducted by any member of the board or any employee or representative of the Department of Environmental Protection so authorized by the board.

STATEMENT OF FACT

This bill makes needed clarifications in the Administrative Procedure Act, regarding the promulgation of rules. With respect to rule-making, the bill:

1. Provides that a quorum of a rule-making agency must attend a public hearing on a proposed rule;
2. More clearly defines the record which must be used as a basis for adopting rules;
3. Provides that proposed rules must reflect the factual and policy basis for the proposals;
4. Requires that proposed rules be written before or at the time a public hearing notice is given; and
5. Provides that the required review of final rules, by the Attorney General's office, shall not be done by the person drafting the proposed rule.