

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1440

H. P. 1217

House of Representatives, March 23, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Hanson of Kennebunkport.

STATE OF MAINE

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

AN ACT to Improve Agency Rulemaking by Mandating Procedures to Analyze the Availability of more Flexible Regulatory Approaches for Affected Businesses, Organizations and Governmental Jurisdictions.

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

Sec. 1. 5 MRSA § 8052, sub-§ 5, as enacted by PL 1977, c. 551, § 3, is amended to read:

5. Written statement adopted. At the time of adoption of any rule, the agency shall adopt a written statement explaining the factual and policy basis for the rule, **including the final regulatory flexibility statement as provided in section 8061.**

Sec. 2. 5 MRSA § 8053, sub-§ 3, ¶¶ C and D, as enacted by PL 1979, c. 425, § 5, are amended to read:

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; **and**

Sec. 3. 5 MRSA § 8053, sub-§ 3, ¶ E is enacted to read:

E. Contain the following statement: "Copies of an economic impact statement and an initial regulatory flexibility statement assessing the possible effects of this rule on businesses, organizations and governmental jurisdictions may be obtained by contacting _____"

(insert name, address and telephone number of the agency proposing the rule).

Sec. 4. 5 MRSA §§ 8060-8065 are enacted to read:

§ 8060. Economic impact statement and initial regulatory flexibility statement

1. Made available to interested persons. When an agency publishes notice of proposed rulemaking as required by sections 8052 and 8053, the agency shall make available for public comment an economic impact statement and an initial regulatory flexibility statement. The statements shall be made available to all interested persons. The agency shall transmit a copy of the statements to the Attorney General for the State.

2. Content. Each economic impact statement shall contain:

- A. A description of the reasons why action by the agency is being considered;
- B. A succinct statement of the objectives of and legal basis for the proposed rule;
- C. A description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of businesses, organizations and governmental jurisdictions which will be subject to the requirements of the proposed rule and the type of professional skills necessary for preparation of the report or record; and
- D. An identification, to the extent practicable, of all relevant rules which may duplicate, overlap or conflict with the proposed rule.

3. Alternatives. Each initial regulatory flexibility statement shall contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on individual businesses, organizations and governmental jurisdictions. Consistent with the stated objectives of applicable statutes, the statement shall discuss significant alternatives to fit regulatory requirements to the scale of the businesses, organizations and governmental jurisdictions. These alternatives may include:

- A. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to affected businesses, organizations and governmental jurisdictions;
- B. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for affected businesses, organizations and governmental jurisdictions;

C. The use of performance rather than design standards; and

D. An exemption from coverage of the rule, or any part thereof, for businesses, organizations or governmental jurisdictions which would be significantly adversely affected by the proposed rule.

§ 8061. Final regulatory flexibility statement

1. Consent. When an agency adopts a rule, it shall make available a final regulatory flexibility statement. Each final regulatory flexibility statement shall contain:

A. A summary of the issues raised by the public comments in response to the economic impact statement and initial regulatory flexibility statement, a summary of the assessment of the agency of the issues and a statement of any changes made in the proposed rule as a result of the comments; and

B. A description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on affected businesses, organizations and governmental jurisdictions which was considered by the agency, and a statement of the reasons why each of those alternatives was accepted or rejected.

2. Availability; publications. The agency shall make copies of the final regulatory flexibility statement available to members of the public and to the Attorney General and, at the time of the publication of the adopted rule in accordance with section 8056, shall publish a statement describing how the public may obtain these copies.

§ 8062. Avoidance of duplicative action

In order to avoid duplicative action, any agency may:

1. Assessments as part of other statement or analysis. Perform the assessments required by sections 8060 and 8061 as a part of any other statement or analysis required by any other law; or

2. Consideration of closely related rules. Consider a series of closely related rules as one rule for the purposes of sections 8060 and 8061.

§ 8063. Effect on other law

The requirements of sections 8060 and 8061 do not alter in any manner standards otherwise applicable by law to agency action.

§ 8064. Preparation of statements

In complying with sections 8060 and 8061, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

§ 8065. Effective date

Sections 8060 to 8064 shall apply to all rules proposed or adopted by any agency after the effective date of this section.

STATEMENT OF FACT

The purpose of this bill is to establish as a principle of agency rulemaking that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.