

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1442

H. P. 1218

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 Carter of Winslow.

Cosponsors: Representative J. Diamond of Bangor, Representative Dexter of Kingfield and Senator Perkins of Hancock.

STATE OF MAINE

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

AN ACT to Provide for Legislative Review of Proposed Agency Rules.

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

Sec. 1. 5 MRSA c. 377, as enacted by PL 1977, c. 683, § 4, is repealed.

Sec. 2. 5 MRSA c. 377-A is enacted to read:

CHAPTER 377-A

LEGISLATIVE REVIEW OF AGENCY RULES

§ 12001. Statement of intent

It is the intent of this chapter to require legislative review of proposed agency rules. It is not the intent of this section to limit the Legislature's authority to review any rule on its own initiative or as required by other statute.

§ 12002. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Agency.** "Agency" means any body of State Government authorized by law to adopt rules, to issue licenses or to take final action in adjudicatory

proceedings, including, but not limited to, every authority, board, bureau, commission, department or officer of the State Government so authorized, but the term shall not include the Legislature, Governor, courts, University of Maine, Maine Maritime Academy, school districts, special purpose districts or municipalities, counties or other political subdivisions of the State.

2. Committee. "Committee" means a Joint Standing Committee of the Legislature on Rules Review.

3. Person. "Person" means any individual, partnership, corporation, governmental entity, association or public or private organization of any character, other than the agency conducting the proceeding.

4. Rule. "Rule" means the whole or any part of every regulation, standard, code, statement of policy or other agency statement of general applicability, including the amendment, suspension or repeal of any prior rule, that is or is intended to be judicially enforceable and implements, interprets or makes specific the law administered by the agency or describes the procedures or practices of the agency.

The term does not include:

- A. Policies or memoranda concerning only the internal management of an agency or the State Government and not judicially enforceable;
- B. Advisory rulings issued under Title 5, chapter 375, subchapter III;
- C. Decisions issued in adjudicatory proceedings; or
- D. Any form, instruction or explanatory statement of policy which in itself is not judicially enforceable and which is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges.

§ 12003. Joint Standing Committee on Rules Review

There is created a Joint Standing Committee on Rules Review which shall review all proposed rules of agencies and other rules assigned to it for review by the Legislature, the Legislative Council or by its own motion.

§ 12004. Meetings

The committee shall meet not less than monthly and shall adopt rules and procedures to efficiently accomplish the reviews as outlined in this chapter.

§ 12005. Notice to the Legislature of rule making

Any agency shall give notice to the Joint Standing Committee on Rules Review of proposed rule making 30 days prior to the adoption of any rule. The notice shall include:

- 1. Authority. The statutory authority for the rule;

2. **Copy of proposed rule.** A copy of the proposed rule;
3. **Statement of policy reason.** A statement of the policy reason for the rule;
4. **Statement of intended goal.** A statement of the intended goal or effect of the rule;
5. **Analysis of rule.** An analysis of the rule; and
6. **Estimated impact.** An estimated financial and other significant impact of the rule on any level of government including the State and on any individual or group of individuals.

§ 12006. Council to refer rules for review to joint standing committees

Within 30 days of receipt of the notice provided in section 12005, the Legislative Council shall refer proposed rules to a joint standing committee of the Legislature which has jurisdiction over the subject matter of the rule. It may delegate this authority to the agency staffing these reviews.

§ 12007. Effective date of rules

An agency rule shall take effect 120 days from the notice provided in section 12005. The rule may include the rule as proposed and any changes adopted pursuant to recommendations of the committee or the public.

§ 12008. Exception

Emergency rules adopted in accord with section 8054 shall take effect when adopted.

§ 12009. Committee review, schedule, report and recommendation

The committee shall review the rule and shall report to the agency and the Legislature its findings and any recommendations within 90 days of the agency notice in section 12005. The report shall recommend continuation, modification including exact language of the modified rule or termination of the rule and include any legislation to be submitted to the next regular session of the Legislature.

§ 12010. Criteria for review by a committee

A committee reviewing a rule shall consider:

1. **Appropriateness.** Appropriateness including:

- A. **Consistency with statutory authority;**
- B. **Necessity; and**
- C. **Effectiveness, including:**

- (1) **The cost of complying with the rule by the person who must comply;**
- (2) **The cost of administering the rule by the agency, other agencies or governmental entities; and**

(3) **Benefits of the rule.**

2. **Change of circumstances.** A change of circumstances since the enactment of the statute authorizing the rule; and

3. **Limitations.** A proposed rule shall not be reviewed by the committee more than once.

§ 12011. **Hearing**

The committee may hold a public hearing on rules submitted to it for review. When any agency has given public notice of a hearing on a proposed rule it shall notify the committee of the time and place. In addition to the information required by section 12009, an agency shall provide the committee with any additional information it has derived from its hearing. The committee may attend the agency hearing in lieu of holding a separate hearing. If an agency holds a public hearing on a proposed amendment to a rule pursuant to a committee's recommendation, it shall notify the committee of the time and place of the hearing.

§ 12012. **Committee action, recommendations not adopted by the agency**

If an agency fails to adopt the recommendation to modify or terminate a rule in the report of the committee, a committee may submit to the next regular session of the Legislature, a bill to amend the agency's rule-making authority in accord with its recommendation. A bill enacted to amend a statute authorizing rule making shall be emergency legislation.

§ 12013. **Agencies to cooperate**

All agencies shall cooperate and provide all information requested and required by this chapter.

§ 12014. **Agency failure to modify a rule**

If a committee decides that a rule is procedurally or substantively unlawful, a notice shall be filed with the certified rule filed with the Secretary of State detailing the precise reasons why the committee believes the rule to be unlawful.

§ 12015. **Saving clause**

This chapter shall not apply to any rule where the application would prevent an agency from participation in any cash or in-kind grant-in-aid program of the Federal Government or the sale of bonds or securities under a state program to finance housing or other state developments. An agency shall give notice, in writing, of the nature of the effect when it submits notice of rule making as provided in section 12005 when this savings clause should take effect.

The failure of a committee to review a rule or to recommend modification or termination is not an implied legislative authorization of its substantive or procedural lawfulness. No legislative review of a rule shall supersede the judicial review to final agency action granted in Title 5, chapter 375.

Sec. 3. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1981-82	1982-83
LEGISLATIVE DEPARTMENT		
Legislative Account		
Positions	(3)	(3)
Personal Services	\$37,500	\$50,000
All Other	1,800	1,000
Per diem	4,500	4,500

These funds are to be used for providing staff and clerical assistance for the Joint Standing Committee on Rules Review.

STATEMENT OF FACT

The purpose of this bill is to provide for legislative review of proposed agency rules.