

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1493**

H. P. 1278

House of Representatives, March 26, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Kelleher of Bangor.

Cosponsors: Senator Ault of Kennebec, Senator Gill of Cumberland,  
Representative Joyce of Portland.

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STATE OF MAINE

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

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**AN ACT to Amend the Maine Administrative Procedure Act.**

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

**Sec. 1. 5 MRSA § 8052**, as amended by PL 1979, c. 425, § 4, is further amended to read:

**§ 8052. Rulemaking**

**1. Notice; public hearing.** Prior to the adoption of any rule, the agency shall give notice as provided in section 8053 and may hold a public hearing, provided that a public hearing shall be held if otherwise required by statute or requested by any 5 interested persons or by any trade, industry, professional or interest group comprised of 5 or more persons which represents that 5 or more such persons desire a public hearing.

**2. Requirements.** Any public hearing shall comply with any requirements imposed by statute, but shall not be subject to subchapter IV. **The hearing shall afford all interested persons at least 15 minutes each to make oral comments.**

**3. Statements and arguments filed.** When a public hearing is held, written statements and arguments concerning the proposed rule may be filed with the agency within 10 days after the close of the public hearing, or within such longer time as the agency may direct.

**4. Relevant information considered.** The agency shall consider all relevant information available to it, including public comments, **and including statements and arguments filed**, before adopting any rule.

**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. **The agency shall specifically address representative comments and state its rationale for adopting or failing to adopt suggested changes.**

**6. Effective date.** No rule, except emergency rules adopted under section 8054, ~~shall~~ may become effective until at least 5 days after filing with the Secretary of State under section 8056, subsection 1, paragraph B.

**7. Adoption of rule.** The agency shall, in adopting rules, be consistent with the terms of the proposed rule, except to the extent it determines necessary to address concerns raised in comments, and makes specific findings supporting such changes. The agency shall act to adopt proposed rules within 120 days of any public hearing or otherwise shall reinstate public notice.

**Sec. 2. 5 MRSA § 8053, sub-§ 1, first sentence**, as repealed and replaced by PL 1979, c. 425, § 5, is amended to read:

At least ~~20~~ 60 days prior to the adoption of any rule without hearing, the agency shall deliver or mail written notice to:

**Sec. 3. 5 MRSA § 8053, sub-§ 1, last ¶**, as enacted by PL 1979, c. 425, § 5, is amended by adding at the end a new sentence to read:

**The notification shall include a copy of the proposed rule.**

**Sec. 4. 5 MRSA § 8053, sub-§ 3, ¶ D**, as enacted by PL 1979, c. 425, § 5, is amended to read:

**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, **including any cost impact on the agency, other state agencies or persons to be governed by the proposed rule**, and indicate where a copy of the proposed rule may be obtained.

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

**3-A. Proposed rule.** The agency shall provide a copy of the proposed rule to any interested person who requests a copy, on and after the date of initial notice under subsection 1. The proposed rule shall contain a statement which describes the need for the proposed rule, alternative approaches considered prior to the determination to promulgate the proposed rule, its estimated impact in terms of economic costs and benefits to the agency, the State and those persons affected by the proposed rule.

**Sec. 6. 5 MRSA § 8053, sub-§ 5, ¶ A, 2nd and 3rd sentences**, as amended by PL 1979, c. 596, § 2, are further amended to read:

Notice of each rule-making proceeding shall be published ~~twice~~ **4 times**, at least 14 days apart. The ~~2nd~~ **4th** notice shall be published at least 3 and not more than 10 days prior to the public hearing on the proposed rule or the same period prior to the last date on which data, views and arguments may be submitted to the agency for consideration if no public hearing is scheduled;

**Sec. 7. 5 MRSA § 8056, ¶ B**, as enacted by PL 1977, c. 551, § 3, is amended to read:

**B.** File a certified copy of the rule with the Secretary of State in a form prescribed by the Secretary of State, which form shall be susceptible to frequent and easy revision: ~~and~~

**Sec. 8. 5 MRSA § 8056, sub-§ 1, ¶ C**, as enacted by PL 1977, c. 551, § 3, is amended to read:

**C.** Supply, without cost or at actual cost, copies of each such rule to any person who has filed with the agency within the past year a written request to be supplied with all copies of the agency's rules; ~~and~~

**Sec. 9. 5 MRSA § 8056, sub-§ 1, ¶ D** is enacted to read:

**D.** Publish notice in a newspaper of general circulation in the area of the State affected pursuant to the procedures set forth in section 8053, subsection 5, containing the information set forth in section 8053, subsection 3, paragraphs A and D.

**Sec. 10. 5 MRSA § 8058, sub-§ 1, last sentence**, as enacted by PL 1977, c. 551, § 3, is amended to read:

In the event that the court finds that an agency has failed to adopt a rule as required by law, the court may issue such orders as are necessary and appropriate to remedy such failure, ~~and may, in its discretion, award attorneys' fees to petitioners, including fees attributable both to agency proceedings and judicial review thereof, taking into account all relevant circumstances.~~

**Sec. 11. 5 MRSA § 11007, sub-§ 4, ¶ B**, as enacted by PL 1977, c. 551, § 3, is amended to read:

**B.** Remand the case for further proceedings, findings of fact or conclusions of law or direct the agency to hold such proceedings or take such action as the court deems necessary; ~~or~~

**Sec. 12. 5 MRSA § 11007, sub-§ 4, ¶ C, sub-¶ (6)**, as enacted by PL 1977, c. 551, § 3, is amended to read:

**(6)** Arbitrary or capricious or characterized by abuse or discretion; ~~or~~

**Sec. 13. 5 MRSA § 11007, sub-§ 4, ¶ D** is enacted to read:

**D.** Award attorneys' fees to petitioners, as a matter of discretion, including fees attributable both to agency proceedings and judicial review thereof, taking into account all relevant circumstances.

## STATEMENT OF FACT

These amendments to the Maine Administrative Procedure Act would:

1. Allow organizations representing 5 or more persons to request rule-making hearings. Current law requires 5 individuals to file requests;
2. Clarify that those appearing at rule-making hearings have a meaningful right to testify;
3. Require the agency, in promulgating rules, to address specifically comments made during the hearing process;
4. Require final rules to be consistent with those proposed, unless changes address comments made and findings are set forth justifying the changes, and require final action within 120 days of the hearing or otherwise reinstate the hearing;
5. Require a statement of cost impact to accompany the proposed rule;
6. Require that the proposed rule either be published with the public notice or otherwise and be available for distribution; and
7. Allow courts to award attorneys' fees to those who successfully challenge agency rules or decisions through judicial review.