

# 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. 1502**

H. P. 1287

House of Representatives, March 27, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Mitchell of Vassalboro.

Cosponsors: Representative Post of Owls Head, Senator Ault of Kennebec and Representative J. Diamond of Bangor.

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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 Establish a Legislative Review of Agency Rules.**

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Sec. 1. 5 MRSA c. 377, as enacted by PL 1977, c. 683, § 4, is repealed.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

§ 1111. Definitions

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

1. Agency, person and rule. "Agency," "person" and "rule" are defined in section 8002, except that "rule" also means a proposed rule.

2. Committee. "Committee" means a joint standing committee of the Legislature.

3. Director. "Director" means the Legislative Administrative Director.

§ 1112. Application for review

Any group of 100 or more individuals, who have a substantial interest in a rule, or any person who may be directly, substantially and adversely affected by the application of a rule, may file an application for review with the Legislative Administrative Director. The applicant shall state with specificity on a form prepared by the director, the following:

1. Name of agency; citation of rule. The name of the agency and the citation of the rule including section and paragraph if applicable;
2. Effect on applicant. A statement of how the rule may directly, substantially and adversely affect the operations or interests of the applicant, or the nature and extent of the applicant's interest in the rule;
3. Statement. A statement of why the rule, in the opinion of the applicant, is inappropriate or unnecessary; and
4. Recommendation. A recommendation proposing changes in the rule or authorizing statute.

#### § 11113. Committee review

The Legislative Administrative Director shall upon receipt of an application for review determine the appropriate joint standing committee of the Legislative responsible for review of the rule in question and send the application and a copy of the rule in question to each member of the committee. Each member of the committee shall individually review the application to determine whether the applicant is qualified and whether the public interest would be served by a review of the rule in question by the full committee. If a committee member decides that the review should be made he shall notify the director within 15 days after notice was sent. If 1/3 or more of the full committee notify the director that a review of the rule should be made, the director shall advise the chairman of the committee, who shall schedule a meeting of the committee to review the rule. If the committee votes not to review the rule a report to that effect shall be prepared by the director and sent to the applicant and the Legislative Council.

The applicant and the affected agency shall be notified of a decision to review the rule and shall be permitted to make expanded statements of their position to the full committee. The committee in the course of its review may hold a public hearing, request and obtain opinions of the Attorney General, obtain information from the agency and conduct further investigation approved by the Legislative Council. The committee shall make its determination and report within 90 days of the first notification to the committee chairmen that a review shall be made.

#### § 1114. Criteria for review

When reviewing a rule under this chapter, the committee shall consider in addition to any matters proposed by the applicant, the following:

1. Consistency with legislation. Whether the rule is consistent with and necessary to the intent of the legislation which authorized its promulgation;

2. Reasonableness of effects. Whether the effects of the rule are reasonable including its benefits and costs, including costs of compliance and administration;
3. Circumstances. Whether circumstances have changed since the passage of the legislation which authorized the promulgation of the rule;
4. Abuse of discretionary powers. Whether the rule may tend to promote abuse of discretionary powers of the agency; and
5. Fee. Whether any fee established by rule is reasonable and whether the sums collected relate to the costs of administration.

**§ 11115. Committee recommendation**

If the committee determines that any of the criteria for review have not been met it may discuss their findings with the agency. No agency may on the basis of these discussions or any subsequent report of the committee terminate a rule that is required by law. If the committee determines that the rule in question is inappropriate or unnecessary it shall notify the applicant of its decision and may direct the Office of Legislative Assistants to draft legislation to amend the law to provide that the authority of the agency to adopt the rule is clarified, modified or limited. Only by a majority vote of the committee shall legislation be introduced to amend the enact legislation pursuant to this section. No legislation may be introduced to implement a decision of a minority of the committee.

After approval of the draft legislation it shall be submitted according to the legislative rules for final preparation and introduction to the Legislature, if it is in session, or if not, to the next regular session of the Legislature.

If the committee determines that no legislative action is required it shall prepare a brief report of its findings and transmit it to the applicant, agency and Legislative Council.

**§ 11116. Limitation**

1. Debt obligations. A joint standing committee may not review an agency rule which is part of official action towards issuance or securing repayment of bonds, notes or other debt obligations of the State, its instrumentalities or political subdivisions.
2. Review on committee's own motion. This chapter shall not limit a committee from reviewing a rule on its own motion.
3. Failure to review. 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 and shall not be considered for any purpose in a judicial proceeding. No legislative review of a rule shall supercede the judicial review of final agency action granted in section 11101.

## STATEMENT OF FACT

This bill will provide that joint standing committees of the Legislature shall review agency rules, upon application of substantially interested or adversely affected persons. A 1/3 affirmative vote of the committee is necessary for a review to be undertaken. Review of existing or proposed rules is permitted and the committee must report within 90 days of notice that the review is to be made.