

MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 228, L.D. 276)
2 (New Title)

3 FIRST REGULAR SESSION
4

5 ONE HUNDRED AND ELEVENTH LEGISLATURE
6

7 Legislative Document

No. 1485

8
9 H.P. 1130

House of Representatives, April 19, 1983

10 Reported by the Minority from the Committee on State Government and
11 printed under Joint Rule 2.

12 Original bill presented by Representative Brown of Livermore Falls.
Cosponsored by Representative Jackson of Harrison and Representative
Sproul of Augusta.

EDWIN H. PERT, Clerk

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-THREE
18

19 AN ACT to Provide Legislative Review
20 of Agency Rules.
21

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

24 Sec. 1. 5 MRSA c. 377-A, as enacted by PL 1981,
25 c. 524, §15, is repealed.

26 Sec. 2. 5 MRSA c. 378 is enacted to read:

27 CHAPTER 378

28 LEGISLATIVE REVIEW OF STATE AGENCY RULES

29 §12000. Purpose

1 The purpose of this chapter is to ensure that
2 agency rules are consistent with statutory intent of
3 the Legislature under which the rules are authorized,
4 the effects of a rule are reasonable, the circum-
5 stances require a rule and the rule is not in excess
6 of the agency's statutory authority.

7 §12001. Definitions

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

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

14 2. Committee. "Committee" means the joint
15 standing committee of the Legislature before which
16 the legislation was presented, authorizing the
17 promulgation of the rule, or the successor to that
18 joint standing committee.

19 3. Director. "Director" means the Director of
20 Legislative Assistants.

21 4. Emergency rule. "Emergency rule" means a
22 rule, as defined in section 8054.

23 5. Proposed rule. "Proposed rule" means a rule
24 for which the agency intends to give notice, as pro-
25 vided in section 8052.

26 §12002. Rule review

27 No agency rule may be adopted, except an emer-
28 gency rule, until the rule has been reviewed by a
29 joint standing committee of the Legislature, as pro-
30 vided in this chapter.

31 §12003. Agency to file proposed rule with Director
32 of Legislative Assistants

33 An agency shall file a copy of any proposed rule,
34 together with the information required in subsection
35 1, with the director no later than 3 p.m. on January
36 15th, May 15th or September 15th. In the event that

1 these dates fall on a weekend or holiday, the dead-
2 line shall be the next business day.

3 1. Information to be provided by agency. The
4 agency shall provide the director and the appropriate
5 committee with:

6 A. The statutory citation for the rule;

7 B. A statement of the intent of the rule;

8 C. A brief explanation of the problem, the issue
9 or law that requires the proposed rule;

10 D. A brief explanation of how the proposed rule
11 will correct the problem or situation or imple-
12 ment the law; and

13 E. An assessment of the impact of the rule to
14 include the economic impact, and the effect on
15 all interested persons, a municipality and the
16 State, if affected.

17 §12004. Rules to be sent to committee

18 The director, upon receipt of the proposed rule
19 for review on any of the dates specified in section
20 12003, shall determine the appropriate joint standing
21 committee of the Legislature responsible for review
22 of the rule in question. A copy of the rule in ques-
23 tion, together with the information required in
24 section 12003, shall be sent to each member of the
25 committee.

26 §12005. Committee meeting and review

27 Each committee shall meet no later than 21 days
28 from receipt of the rule from the director for the
29 purpose of deciding which rules shall be reviewed by
30 the committee and for reviewing the rules approved by
31 the committee for review. No proposed rule may be
32 reviewed by the committee, unless a majority of the
33 committee members approve review of the rule.

34 The committee shall notify the agency of its
35 decision to review the rule. The agency shall be
36 permitted to make expanded statements of its position

1 to the committee. The committee, in the course of
2 its review, shall be provided staff assistance by the
3 director. The committee may hold a public hearing,
4 request and obtain opinions of the Attorney General,
5 obtain information from the agency and conduct fur-
6 ther investigation approved by the Legislative Coun-
7 cil.

8 The committee shall also notify the agency of its
9 decision not to review a rule.

10 §12006. Criteria for review

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

14 1. Consistency with legislation. Whether the
15 rule is consistent with and necessary to the intent
16 of the statute which the rule implements;

17 2. Reasonableness of effects. Whether the
18 effects of the rule are reasonable, including its
19 benefits and costs, and including costs of compliance
20 and administration;

21 3. Circumstances. Whether circumstances have
22 changed since the passage of the statute which the
23 rule implements;

24 4. Exceeds statutory authority. Whether the
25 rule exceeds the agency's statutory authority; and

26 5. Fee. Whether any fee established by rule is
27 reasonable and whether the sums collected relate to
28 the costs of administration.

29 §12007. Committee report

30 The committee shall report its findings and
31 determination to the agency no later than 60 days
32 from the date the committee first convened to decide
33 whether or not to review the rule. A copy of the
34 report shall be sent to the director and the Legis-
35 lative Council.

36 1. Committee determination. The committee may
37 determine that:

- 1 A. The rule is necessary in its proposed form;
2 B. The rule is necessary in an amended form, as
3 modified by the committee; or
4 C. The rule is inappropriate or unnecessary.

5 2. Committee findings. The committee, in addi-
6 tion to issuing its determination, shall report its
7 findings which, at a minimum, shall evaluate the pro-
8 posed rule with respect to the criteria described in
9 section 12006. The committee may consider any other
10 criteria that it deems necessary to determine the
11 intent, reasonableness and effect of the rule, to
12 include research into the impact of similar rules in
13 other states.

14 3. Implementating legislation. The committee,
15 in its report, may include legislation to be submit-
16 ted to the Legislature, if the Legislature is in
17 session, or to the next regular session of the Legis-
18 lature. The committee may direct the Director of
19 Legislative Assistants to draft legislation to amend
20 the law, to modify, clarify or limit the authority of
21 the agency to adopt the rule. Legislation adopted
22 only by a majority vote of the committee shall be
23 introduced to amend or enact legislation pursuant to
24 this section.

25 4. Minority reports. In the event that one or
26 more members of a committee disagree with the deter-
27 minations and findings of the majority of the commit-
28 tee, the members in the minority may issue their
29 findings and explain their disagreement with the
30 majority. Minority reports shall not contain any
31 legislation.

32 5. Failure to respond. If a committee fails to
33 report its determination and findings in 60 days, as
34 required in this section, the agency shall consider
35 the absence of a report to be a determination of
36 approval of the rule.

37 §12008. Review of existing rules by committee

38 Upon the request of a majority of the committee,
39 a committee may review an existing rule or set of

1 rules. The committee shall review the rule and
2 report its findings in accordance with sections 12005
3 and 12006. The director shall provide staff assis-
4 tance to the committee in the course of its review.

5 The committee shall notify the agency of its
6 decision to review the rule. The agency shall pro-
7 vide the committee with the information required in
8 section 12003 and any additional information neces-
9 sary to evaluate the intent, reasonableness and
10 impact of the rule. The committee may hold public
11 hearings, request and obtain opinions of the Attorney
12 General and conduct further investigation approved by
13 the Legislative Council, as provided in section
14 12005.

15 The agency shall be permitted to make expanded
16 statements of its position to the full committee.

17 §12009. Emergency rule

18 In the event that an agency adopts an emergency
19 rule, the agency shall provide the committee with the
20 information, as required in this chapter. The com-
21 mittee shall review the rule and report its determi-
22 nation and findings in accordance with this chapter.
23 The agency shall make every effort possible to pro-
24 vide the director with the emergency rule and to
25 solicit an informal and nonbinding opinion of the
26 committee prior to adoption of the rule.

27 §12010. Agency annual report on rules

28 Each agency shall provide the committee that has
29 reviewed the agency's rules with an annual report,
30 due no later than January 5th, of each calendar year.
31 The annual report, in part, shall be a summary of the
32 activity of the rules reviewed and the adoption of
33 agency rules for the previous calendar year and shall
34 include the following:

35 1. Proposed rules. The total number of rules
36 proposed by the agency and submitted for review by
37 the appropriate committee;

38 2. Proposed rules approved by committee. The
39 total number of proposed rules approved by the com-
40 mittee:

1 A. Without change;

2 B. With changes proposed by the committee; and

3 C. The number of proposed rules adopted by the
4 agency for each category in paragraphs A and B;

5 3. Proposed rules rejected by committee. The
6 total number of proposed rules rejected by the com-
7 mittee and the number of these rules adopted by the
8 agency in disagreement with the committee;

9 4. Existing rules approved by committee. The
10 total number of existing rules reviewed by the com-
11 mittee on its own motion or upon petition and
12 approved by the committee:

13 A. Without change; and

14 B. With changes proposed by the committee;

15 5. Adoption of rule changes requested by the
16 committee. The number of rule changes adopted by the
17 agency at the request of the committee;

18 6. Existing rules disapproved by committee. The
19 total number of existing rules reviewed by the com-
20 mittee on its own motion or upon petition and deter-
21 mined by the committee to be inappropriate or unrec-
22 essary;

23 7. Rescinded rules. The number of existing
24 rules disapproved by the committee, as defined in
25 subsection 6, that the agency rescinded or proposed
26 to rescind; and

27 8. Reasons for certain agency decisions. The
28 reason for an agency decision with respect to any
29 rule described in this section that disagrees with
30 the committee determination.

31 §12011. Limitations

32 1. Debt obligations. A joint standing committee
33 may not review an agency rule which is part of offi-
34 cial action towards issuance or securing payment of
35 bonds, notes or other debt obligations of the State,
36 its instrumentalities or political subdivisions.

- 1 2. State agencies shall send proposed rules to
2 the Legislature no later than January 15th, May
3 15th and September 15th;
- 4 3. The committee, only by majority vote, shall
5 review the rule;
- 6 4. The committee to which the rule has been sent
7 for review shall report its determination and
8 findings within 60 days from the committee deci-
9 sion to review the rule;
- 10 5. The committee may report legislation to the
11 Legislature to amend the law by which the rule
12 has been proposed to modify, clarify or limit the
13 authority of the agency to adopt the rule;
- 14 6. The committee may disapprove a rule, but only
15 the Legislature may nullify or modify the rule by
16 changing the law that authorizes the agency to
17 adopt rules;
- 18 7. Emergency rules may be adopted without com-
19 mittee review, but the agency shall be required
20 to provide the committee with the information
21 necessary to evaluate the rule;
- 22 8. A committee may review a rule on the motion
23 of a majority of the committee members; and
- 24 9. Traffic rules, rules for issuing debt obli-
25 gations and federal rules are not subject to
26 legislative review.

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