

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1117  
6

7 H.P. 784

House of Representatives, March 22, 1985

8 On Motion of Representative Gwadosky of Fairfield, referred to the  
9 Committee on State Government. Sent up for concurrence and ordered  
printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Lebowitz of Bangor.

11 Cosponsored by Representative Gwadosky of Fairfield, Representative  
Kimball of Buxton and Senator Brown of Washington.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FIVE  
16

17 AN ACT to Provide for Legislative Oversight  
18 Prior to the Implementation of  
19 Departmental Rules.  
20

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

23 Sec. 1. 5 MRSA §8052, sub-§6, as amended by PL  
24 1981, c. 524, §5, is repealed and the following en-  
25 acted in its place:

26 6. Effective date. No rule, except an emergency  
27 rule adopted under section 8054, may become effective  
28 until at least 5 days have expired after filing with  
29 the Secretary of State under section 8056, subsection  
30 1, paragraph B, and:

31 A. It has been reviewed by a specific joint  
32 standing committee of the Legislature pursuant to  
33 express statutory authorization; or

1 B. It has been reviewed by and comments received  
2 from a joint standing committee of the Legisla-  
3 ture under section 8055-A.

4 Sec. 2. 5 MRSA §8055-A is enacted to read:

5 §8055-A. Prior legislative review

6 1. Agency submission. Prior to the adoption of  
7 a rule, the agency shall submit the rule to the Leg-  
8 islative Administrative Director who shall refer the  
9 rule to an appropriate joint standing committee of  
10 the Legislature for its review. In addition to the  
11 rule, the agency shall submit:

12 A. A citation of the statutory authority for the  
13 adoption of the rule;

14 B. A concise statement of the principal reasons  
15 for the rule;

16 C. An analysis of the rule; and

17 D. An estimated fiscal impact of the rule on the  
18 State or any municipality.

19 2. Reference to committee. Upon reference to it  
20 of a rule, the joint standing committee shall review  
21 the rule using the criteria set forth in subsection  
22 4. If the committee determines that the review  
23 should be made by a different joint standing commit-  
24 tee, it shall notify the Legislative Administrative  
25 Director who shall then refer the rule to the sug-  
26 gested joint standing committee.

27 3. Review period. The date upon which the Leg-  
28 islative Administrative Director refers the rule to a  
29 joint standing committee begins the 60-day review pe-  
30 riod indicated in subsection 5. If, upon suggestion  
31 of the joint standing committee to whom the rule is  
32 initially referred, the rule is referred to a differ-  
33 ent committee, the Legislative Administrative Direc-  
34 tor shall so notify the agency and the 60-day review  
35 period shall begin again.

36 4. Criteria for review. When reviewing a rule  
37 under this section, the joint standing committee

1 shall use the minimum following criteria upon which  
2 to base its comments:

3 A. Whether the rule is consistent with and nec-  
4 essary to the intent of the legislation which au-  
5 thorized its promulgation;

6 B. Whether the effects of the rule are reason-  
7 able and beneficial, including its benefits and  
8 costs which shall include the costs of compliance  
9 and administration; and

10 C. Whether circumstances have changed since the  
11 passage of the legislation which authorized its  
12 promulgation. If the committee so finds, it may  
13 suggest changes in the authorizing legislation or  
14 the methods being followed to accomplish the leg-  
15 islative purpose.

16 5. Committee determination. Within 60 days of  
17 referral of a proposed rule to a joint standing  
18 committee of the Legislature under this section, the  
19 committee shall provide written comments or any other  
20 information to the agency proposing the rule. No  
21 rule may be adopted for a period of 60-days during  
22 which the committee reviews the rule and issues its  
23 comments on the proposed rule. In the event that a  
24 committee issues its decision prior to the completion  
25 of the 60-day period as described in this section,  
26 the agency may take the action it deems necessary  
27 with respect to the rule. If the committee issues no  
28 comments or information within the 60-day period to  
29 the agency proposing the rule, the rule shall be  
30 deemed to comply with legislative intent.

31 6. Proposed rule; Legislature adjourned. In the  
32 event that the Legislature has adjourned when an  
33 agency proposes a rule, the agency shall submit the  
34 proposed rule and the information defined in subsec-  
35 tion 1 to the Legislative Administrative Director.  
36 The Legislative Administrative Director shall send to  
37 each member of the appropriate joint standing  
38 committee copies of the proposed rule and the accompanying  
39 information provided by the agency. In addition, the  
40 Legislative Administrative Director shall provide to  
41 each committee member a form which each member shall  
42 sign and on which he shall record his comments and

1 evaluation of the proposed rule. The form shall be  
2 returned to the Legislative Administrative Director  
3 or his designee.

4 A. The committee may convene or, at the discre-  
5 tion of both chairmen, the Legislative Adminis-  
6 trative Director or his designee may prepare a  
7 written report to be approved by both chairmen  
8 and to be sent to the agency proposing the rule.  
9 The report required by this subsection shall be  
10 organized into at least 2 categories. One cate-  
11 gory shall be a finding that the proposed rule  
12 does not comply with legislative intent and is  
13 not reasonable or beneficial. The other category  
14 shall be a finding that the proposed rule is con-  
15 sistent with legislative intent and is reasonable  
16 or beneficial. Each report shall contain the  
17 names of the committee members who endorse the  
18 report.

19 B. The 60-day period, as defined in subsection  
20 5, shall commence for the purpose of this subsec-  
21 tion on the date that the Legislative Administra-  
22 tive Director sends the proposed rule and accom-  
23 panying information to the appropriate joint  
24 standing committee to review the rule.

25 Sec. 3. 5 MRSA §8056, sub-§1, as amended by PL  
26 1981, c. 524, §§11 and 12, is further amended to  
27 read:

28 1. Requirements. With respect to every rule  
29 adopted and approved by a joint standing committee of  
30 the Legislature under section 8055-A or other express  
31 statutory authority, the agency shall:

32 A. Submit the rule to the Attorney General for  
33 approval as to form and legality;

34 B. File a certified copy of the rule with the  
35 Secretary of State in a form prescribed by the  
36 Secretary of State, which form shall be suscepti-  
37 ble to frequent and easy revision;

38 C. Supply, without cost or at actual cost,  
39 copies of each such rule to any person who has  
40 filed with the agency within the past year a

1 written request to be supplied with all copies of  
2 the agency's rules; and

3 D. Publish, pursuant to the procedures set forth  
4 in section 8053, subsection 5, a notice contain-  
5 ing the following information: A statement that  
6 the rule has been adopted, its effective date, a  
7 brief description of the substance of the rule,  
8 and the address where a copy may be obtained.

9 STATEMENT OF FACT

10 The purpose of this bill is to enable joint  
11 standing committees of the Legislature to review  
12 agency rules and provide comments to the agency pro-  
13 posing the rule prior to adoption of the rule. The  
14 joint standing committees are not given veto power  
15 over agency rules because such a provision violates  
16 the "separation-of-powers" principle of the Constitu-  
17 tion of Maine.

18 The joint standing committees of the Legislature,  
19 following notice of proposed rules to be adopted by  
20 state agencies are given a 60-day period to evaluate  
21 and make comments about the proposed rules. In the  
22 event that the Legislature is not in session when a  
23 rule is proposed for adoption, the committee may con-  
24 vene to review the rule or the committee chairmen may  
25 authorize the Legislative Administrative Director or  
26 the director's designee to obtain written comments  
27 from each member of the committee and prepare a com-  
28 mittee report to be approved by the chairmen and to  
29 be sent to the agency proposing the rule.

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