

MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 1543, L.D. 2180)
2 (New Title)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 2341

8
9 H.P. 1663 House of Representatives, April 7, 1986
10 Reported by Representative Dillenback from the Committee on State
11 Government and printed under Joint Rule 2. Original bill sponsored by
12 Representative Gwadosky of Fairfield. Cosponsored by Representative
Hichborn of LaGrange, Senator Andrews of Cumberland and Representative
Lacroix of Oakland.

EDWIN H. PERT, Clerk

13
14 STATE OF MAINE
15

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

19 AN ACT to Amend Rule-making Provisions in the
20 Maine Administrative Procedure Act.
21

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

24 Sec. 1. 5 MRSA §8052, sub-§5, as amended by PL
25 1981, c. 524, §4, is further amended to read:

26 5. Written statement adopted. At the time of
27 adoption of any rule, the agency shall adopt a writ-
28 ten statement explaining the factual and policy basis
29 for the rule. The agency shall specifically address
30 representative comments and state its rationale for
31 adopting any changes from the proposed rule, or fail-
32 ing to adopt suggested changes.

33 Sec. 2. 5 MRSA §8052, sub-§7, as amended by PL
34 1985, c. 506, Pt. A, §2, further amended to read:

1 7. Adoption of rule. The agency shall, in
2 adopting rules, be consistent with the terms of the
3 proposed rule, except to the extent it determines
4 necessary to address concerns raised in comments and
5 makes specific findings supporting such changes. No
6 rule may become effective unless:

7 A. The agency adopts it within 120 days of the
8 final date by which data, views or arguments may
9 be submitted to the agency for consideration in
10 adopting the rule; and

11 B. This adopted rule is approved by the Attorney
12 General as to form and legality, as required by
13 section 8056, within 150 days of the final date
14 by which those comments may be submitted.

15 The final date for comments may be extended if notice
16 of doing so is published before that final date, in
17 the consolidated notice referred to in section 8053.

18 Sec. 3. 5 MRSA §8053-A, first ¶, as enacted by
19 PL 1985, c. 270, is repealed and the following en-
20 acted in its place:

21 At the time of giving notice of rulemaking under
22 section 8053 or within 10 days following the adoption
23 of an emergency rule, the agency shall provide copies
24 of the proposed rule to the Executive Director of the
25 Legislative Council. The Executive Director of the
26 Legislative Council or his designee shall refer the
27 proposed rule to the appropriate joint standing com-
28 mittee or committees of the Legislature for review.

29 Sec. 4. 5 MRSA §8053-A, sub-§1, as enacted by PL
30 1985, c. 270, is amended to read:

31 1. Additional information to be submitted. In
32 addition to providing the ~~Legislative Administrative~~
33 ~~Director~~ Executive Director of the Legislative
34 Council with a sufficient number of copies of a pro-
35 posed rule for each member of the appropriate commit-
36 tee or committees, the agency shall also provide to
37 the ~~Legislative Administrative Director~~ Executive Di-
38 rector of the Legislative Council sufficient copies
39 of a fact sheet providing:

- 1 A. A citation of the statutory authority for the
2 adoption of the rule;
- 3 B. A concise statement of the principal reasons
4 for the rule;
- 5 C. An analysis of the rule; and
- 6 D. An estimated fiscal impact of the rule.

7 Sec. 5. 5 MRSA §8057, sub-§1, as amended by PL
8 1977, c. 694, §35, is further amended to read:

9 1. Rules; exception. Rules adopted in a manner
10 other than that prescribed by ~~sections~~ section 8052,
11 subsections 1, 2, 3, 4 and 7 and by section 8053 and
12 8054 shall be void and of no legal effect, provided
13 that insubstantial deviations from the requirements
14 of section 8053 shall not invalidate the rule subse-
15 quently adopted. Rules in effect prior to July 1,
16 1978, shall become void and of no legal effect on Ju-
17 ly 1, 1979, unless originally adopted after notice
18 published in a newspaper of general circulation in
19 some area of the State and opportunity for hearing or
20 unless adopted in accordance with chapter 375, sub-
21 chapter II.

22 Sec. 6. 5 MRSA §8058, sub-§1, as amended by PL
23 1979, c. 669, §1, is further amended to read:

24 1. Judicial review. Judicial review of an agency
25 rule, or of an agency's refusal or failure to adopt a
26 rule where the adoption of a rule is required by law,
27 may be had by any person who is aggrieved in an ac-
28 tion for declaratory judgment in the Superior Court
29 conducted pursuant to Title 14, section 5951, et
30 seq., which provisions shall apply to such actions
31 wherever not inconsistent with this section. Insofar
32 as the court finds that a rule ~~was improperly adopted~~
33 or exceeds the rule-making authority of the agency,
34 or is void under section 8057, subsection 1 or 2, it
35 shall declare the rule invalid. In reviewing any
36 other procedural error alleged, the court may invali-
37 date the rule only if it finds the error to be sub-
38 stantial and related to matters of such central
39 relevance to the rule that there is a substantial
40 likelihood that the rule would have been significant-

1 ly changed if the error had not occurred. If the
2 court finds that the rule was properly adopted is not
3 procedurally invalid and not in excess of the agen-
4 cy's rule-making authority, its substantive review of
5 that rule shall be to determine whether the rule is
6 arbitrary, capricious, an abuse of discretion or oth-
7 erwise not in accordance with law. The phrase "other-
8 wise not in accordance with law" shall apply only to
9 the review authorized in the preceding sentence and
10 shall not be construed so as to limit or replace in
11 any way section 8003. In the event that the court
12 finds that an agency has failed to adopt a rule as
13 required by law, the court may issue such orders as
14 are necessary and appropriate to remedy such failure.

15 Sec. 7. 5 MRSA §8059, as enacted by PL 1979, c.
16 669, §2, is repealed and the following enacted in its
17 place:

18 §8059. Inconsistent rules

19 When 2 rules are inconsistent or in conflict with
20 one another, so that compliance with both is impossi-
21 ble, then compliance with either rule shall be deemed
22 to be in compliance with the other.

23 Sec. 8. 5 MRSA §10005 is enacted to read:

24 §10005. Decision and record

25 Any licensing decision not involving an adjudica-
26 tory proceeding, as defined in section 8002, subsec-
27 tion 1, shall be made in writing and shall be made
28 only on the basis of evidence relevant to the case.
29 When the requested license is denied, or only condi-
30 tionally approved, the decision shall contain or re-
31 fect the agency's reasoning, in a manner sufficient
32 to inform the applicant and the public of the basis
33 for the agency's action.

34 Sec. 9. 5 MRSA §11006, sub-§1, ¶D, as enacted by
35 PL 1977, c. 551, §3, is repealed and the following
36 enacted in its place:

37 D. In cases where an adjudicatory proceeding
38 prior to final agency action was not required,
39 and where effective judicial review is precluded

1 rule. The Maine Administrative Procedure Act, Title
2 5, chapter 375, requirements concerning the effective
3 date of a rule, the basis statements, the agency's
4 response to representative public comments and refer-
5 ence to underlying laws would provide grounds for in-
6 validating a rule only if it is found that the error
7 had a substantial potential to affect the rule in a
8 significant way.

9 Section 7 of the new draft is for clarification
10 only.

11 Sections 8 and 9 of the new draft clarify the
12 original intention of the Maine Administrative Proce-
13 dure Act, Title 5, chapter 375, for judicial review
14 of those decisions where no administrative hearing is
15 required by the relevant statute. Section 8 makes
16 clear that written decisions are required and must be
17 made only on the basis of relevant evidence. For
18 most of these decisions, a written decision is al-
19 ready required by the Maine Revised Statutes, Title
20 1, section 407.

21 Section 9 carries out the basis premise of the
22 Maine Revised Statutes, Title 5, section 11006, by
23 having judicial review of licensing decisions on the
24 basis of an administrative record. Where no review-
25 able record is available to the court, for any rea-
26 son, judicial review cannot proceed. The method of
27 recreating a record is left to the parties and the
28 court, but the existing law's reference to an admin-
29 istrative hearing is deleted, since by definition li-
30 censing decisions are ones that the Legislature has
31 authorized to be made without hearing.

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