

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 161

H.P. 132 House of Representatives, February 3, 1987
Reported by Representative Carroll from the Committee on
State and Local Government. Sent up for concurrence and
ordered printed. Approved by the Legislative Council on April
17, 1986.

Reported from the Joint Standing Committee on State and
Local Government under Joint Rule 19.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

AN ACT to Improve Legislative and Public
Access to the Agency Rule-making
Process.

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

Sec. 1. 5 MRSA §8002, sub-§9, ¶A, as amended by
PL 1979, c. 425, §3, is further amended to read:

A. "Rule" means the whole or any part of every
regulation, standard, code, statement of policy,
or other agency statement of general applicability,
including the amendment, suspension or repeal
of any prior rule, that is or is intended to be
judicially enforceable and implements, interprets
or makes specific the law administered by the
agency, or describes the procedures or practices

1 of the agency. All rules promulgated after July
2 17, 1979, shall, to the maximum extent feasible,
3 as determined by the affected agency, use plain
4 and clear English, which can be readily under-
5 stood by the public.

6 Sec. 2. 5 MRSA §8052, sub-§5, as amended by PL
7 1985, c. 680, §1, is further amended to read:

8 5. Written statement adopted. At the time of
9 adoption of any rule, the agency shall adopt a writ-
10 ten statement explaining the factual and policy basis
11 for the rule. The agency shall specifically address
12 representative comments and state its rationale for
13 adopting any changes from the proposed rule, or fail-
14 ing to adopt suggested changes. The statement ad-
15 dresssing representative comments shall contain a de-
16 tailed explanation of the agency's response to those
17 comments.

18 Sec. 3. 5 MRSA §8053-A, as amended by PL 1985,
19 c. 528 and as amended by c. 680, §§3 and 4 and as
20 amended by c. 737, Pt. B, §13, is repealed and the
21 following enacted in its place:

22 §8053-A Notice to legislative committees

23 1. Proposed rules. At the time of giving notice
24 of rulemaking under section 8053 or within 10 days
25 following the adoption of an emergency rule, the
26 agency shall provide copies of the proposed rule to
27 the Legislature. The agency shall also provide a
28 fact sheet providing:

29 A. A citation of the statutory authority for the
30 adoption of the rule;

31 B. A concise statement of the principal reasons
32 for the rule;

33 C. An analysis of the rule; and

34 D. An estimated fiscal impact of the rule.

35 2. Regulatory agenda. The agency shall provide
36 copies of its agency regulatory agenda to the Legis-
37 lature at the time that the agenda is issued.

1 3. Adopted rules. When an agency adopts rules,
2 is shall provide a copy of the adopted rule and the
3 statement required by section 8052, subsection 5, and
4 the checklist required by section 8056-A to the Leg-
5 islature.

6 4. Procedure. When an agency is required by
7 this section to provide materials to the Legislature,
8 it shall provide them to the Executive Director of
9 the Legislative Council who shall refer the materials
10 to the appropriate committee or committees of the
11 Legislature for review. The agency shall provide
12 sufficient copies of the materials for each member of
13 the appropriate committee or committees.

14 Sec. 4. 5 MRS A §8056, sub-§3, ¶A-1, as enacted
15 by PL 1979, c. 425, §9, is repealed.

16 Sec. 5. 5 MRS A §8056-A is enacted to read:

17 §8056-A. Oversight

18 1. Monitoring. The Secretary of State shall
19 monitor the compliance of all agencies with this sub-
20 chapter. He shall establish and implement a check-
21 list which shall be completed for each rule which is
22 proposed after January 1, 1988. The purpose of the
23 checklist is to provide an indication of the agency's
24 compliance with rule-making requirements. It shall
25 include the timing of filing and notices as well as
26 other requirements, such as the adequacy and clarity
27 of explanatory and fiscal information.

28 2. Technical assistance. The Secretary of State
29 shall develop drafting instructions for use by agen-
30 cies which propose rules under this subchapter. In
31 addition, the Secretary of State shall provide advice
32 and assistance to any agency regarding the drafting
33 of rules and supporting materials and the other re-
34 quirements of this subchapter.

35 3. Report. The Secretary of State shall report
36 to the Governor and the Legislature prior to February
37 1st of each year with respect to agency compliance
38 with the provisions of sections 8052, 8053-A and
39 8060. The Secretary of State shall specify in the
40 report the areas in which compliance needs improve-

1 ment and the means by which improvement can be
2 achieved. The Secretary of State shall also specify
3 the agencies that have relatively low compliance
4 rates.

5 Sec. 6. 5 MRSA §§8060, 8061 and 8062 are enacted
6 to read:

7 §8060. Regulatory agenda

8 Each agency with the authority to adopt rules
9 shall issue an agency regulatory agenda as provided
10 in this section.

11 1. Contents of agenda. Each agency regulatory
12 agenda must contain the following information:

13 A. A list of rules that the agency expects to
14 propose prior to the next regulatory agenda due
15 date;

16 B. The statutory or other basis for adoption of
17 the rule;

18 C. The purpose of the rule;

19 D. The contemplated schedule for adoption of the
20 rule; and

21 E. An identification and listing of potentially
22 benefited and regulated parties.

23 2. Due date. A regulatory agenda must be issued
24 prior to 100 days after adjournment of each regular
25 session of the Legislature.

26 3. Legislative copies. The agency shall provide
27 copies of the agency regulatory agenda to the Legis-
28 lature as provided in section 8053-A.

29 4. Availability. An agency which issues an
30 agency regulatory agenda shall provide copies to in-
31 terested persons.

32 5. Legislative review of agency regulatory agen-
33 das. Each regulatory agenda shall be reviewed by the
34 appropriate joint standing committee of the Legisla-

1 ture at a meeting called for that purpose. The com-
2 mittee may review more than one agenda at a meeting.

3 §8061. Licensing and commodity boards

4 1. Initial review by commissioner. Prior to De-
5 cember 1, 1987, the commissioner of the department in
6 which is located an occupational and professional li-
7 censing board or a commodity or product protection
8 and promotion board, as those boards are described in
9 section 12004, subsections 1 and 9, shall review the
10 existing rules of the board and shall issue a report
11 to the appropriate joint standing committee of the
12 Legislature evaluating those rules according to the
13 following criteria:

14 A. Whether the board's rules are consistent with
15 its rule-making authority;

16 B. Whether the board's rules are consistent with
17 legislative intent; and

18 C. Whether the board accurately complies with
19 the requirements of this subchapter relating to
20 rulemaking.

21 2. Subsequent review. Each year after 1987, the
22 commissioner shall evaluate rules proposed by the
23 board during that year and submit a report containing
24 the results of the evaluation to the appropriate
25 joint standing committee of the Legislature by the
26 same date that regulatory agendas are due as speci-
27 fied in section 8060.

28 §8062. Style

29 All rules and any other materials required by
30 this subchapter to be provided to the public or to
31 the Legislature shall, to the maximum extent feasi-
32 ble, use plain and clear English, which can readily
33 be understood by the general public. The use of
34 technical language shall be avoided to the greatest
35 possible extent.

36 Sec. 7. Codification of rules. The Secretary of
37 State shall investigate the cost and advisability of
38 codification and indexing of agency rules, including

1 the potential for contracting with private resources.
2 The Secretary of State shall report the findings of
3 the investigation to the joint standing committee of
4 the Legislature having jurisdiction over state and
5 local government by December 1, 1987.

6 STATEMENT OF FACT

7 This bill contains the recommendations of the
8 Joint Standing Committee on State Government as a re-
9 sult of its study of the issue of legislative veto of
10 agency rules. These recommendations are intended to
11 strengthen the rule-making process, primarily by in-
12 creased public and legislative notice of rule-making
13 proceedings and through monitoring of agency compli-
14 ance by the Secretary of State.

15 Sections 1 and 6 expand the requirement that
16 rule-making materials be written in plain and clear
17 English understandable to the public.

18 Section 2 requires that agency statements ad-
19 dressing public comments on a proposed rule must con-
20 tain a detailed explanation of the agency's response
21 to those comments. This provision attempts to remedy
22 the concerns expressed by some members of the public
23 that some agencies currently do not provide suffi-
24 cient information with regard to public comments on
25 proposed rules.

26 Section 3 revises the Maine Revised Statutes, Ti-
27 tle 5, section 8053-A regarding rule-making documents
28 that must be provided to the Legislature. It cor-
29 rects inconsistencies created by several contempora-
30 neous amendments to section 8053-A in 1986 and ex-
31 pands its coverage to include the new regulatory
32 agenda and copies of adopted rules with their sup-
33 porting statements.

34 Section 4 repeals a provision of law requiring
35 the Secretary of State to compile, index and edit
36 agency rules. This provision was originally enacted
37 in 1979 when it appeared that an independent contrac-
38 tor was interested in publishing the rules. That ef-
39 fort was never completed. The requirement is not

1 currently being met and should be repealed. In its
2 place, this bill recommends in section 7 that the
3 Secretary of State investigate and report to the
4 joint standing committee on State Government regard-
5 ing the cost and advisability of compiling and index-
6 ing the rules.

7 Section 5 provides that the Secretary of State
8 will develop instructions and explanatory information
9 to agencies which develop rules and will provide as-
10 sistance in drafting to rule-making agencies. This
11 section also provides that the Secretary of State
12 will monitor agency compliance with rule-making re-
13 quirements and adopt a checklist which will be pro-
14 vided to the Legislature when a rule is adopted.

15 Section 6 requires each agency with the authority
16 to adopt rules to issue a regulatory agenda at the
17 time following a regular session of the Legislature
18 when most laws become effective. The agenda would
19 then be reviewed by the appropriate joint standing
20 committee of the Legislature.

21 Section 6 also provides that existing and pro-
22 posed rules of certain "independent" boards must be
23 reviewed by the commissioner of the appropriate de-
24 partment of government by December 1, 1987 and annu-
25 ally thereafter. The commissioner's report would be
26 available to the Legislature for review at the same
27 time as regulatory agendas.

28 Section 7 requires the Secretary of State to in-
29 vestigate and report on the cost and advisability of
30 compiling and indexing all state agency rules in or-
31 der to provide a resource which would be more readily
32 available to the public.

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