FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document **NO. 665**

H.P. 495 House of Representatives, March 6, 1987

Reference to the Committee on State and Local Government suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative McGOWAN of Canaan.

Cosponsored by Representatives CARROLL of Gray, MICHAUD of East Millinocket and Senator USHER of Cumberland.

STATE OF MAINE

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

AN ACT to Reform Regulatory Proceedings under Rulemaking of the Maine Administrative Procedure Act.

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

Sec. 1. 5 MRSA §8052, sub-§4, as amended by PL 1981, c. 524, §3, is further amended to read:

4. Relevant information considered. The agency shall consider all relevant information available to it, including statements and arguments filed, before adopting any rule.

In considering the adoption of regulations, the agency shall adhere to the following rules:

A. Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed rulemaking;

B. Potential benefits of regulation must outweigh potential cost to society;

C. Objectives shall be chosen to maximize net benefits to society;

D. Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen unless there are legal or other compelling reasons for choosing a different option; and

E. The agency shall seek to reduce disproportionate economic impacts of major rules on small businesses through different compliance or reporting requirements or timetables, consolidating or simplifying compliance and design standards and exempting from requirements where appropriate.

During the process of adoption of a rule, including the public hearing and the post-hearing comment period, persons are to be encouraged to testify about and comment on the cost and benefits of the proposed rule and the analysis of alternative regulatory mechanisms described in the regulatory impact analysis.

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

7. Adoption of rule. The agency shall, in adopting rules, be consistent with the terms of the proposed rule, except to the extent it determines necessary to address concerns raised in comments and make specific findings supporting those changes. No rule may be adopted which contains requirements that could not reasonably have been anticipated from the notice of rulemaking pursuant to section 8053, subsection 2 and from the terms of the proposed rule. No rule may become effective unless:

A. The agency adopts it within 120 days of the final date by which data, views or arguments may

be submitted to the agency for consideration in adopting the rule; and

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

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

Sec. 3. 5 MRSA §8053, sub-§3-B is enacted to read:

3-B. Regulatory impact analysis. All agencies shall prepare and make available to all interested parties at the time of publication of the notice referred to in subsection 2, a statement describing in clear terms the expected impact of the proposed rule on benefited and regulated entities. These statements shall provide as comprehensive an analysis as possible under the particular circumstances and shall, at a minimum, contain the following:

A. A specific citation of the law to be implemented by the proposed rule;

B. A description of the objective sought to be achieved by the rule;

C. A description of the potential benefits, including those that cannot be quantified in monetary terms, and of those likely to receive these benefits;

D. A description of the potential costs, including those that cannot be quantified in monetary terms and of those likely to bear these costs;

E. A description of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

F. A description of the available alternative regulatory approaches that could achieve substantially the same regulatory objective, at lower

cost, together with a statement of the potential benefits and costs and a brief description of the reasons which prevent the alternatives from being substituted for the one proposed;

G. A description of the reporting, record keeping and other compliance requirements, including costs of equipment, supplies, labor, legal, consulting and accounting services that may be incurred; and

H. A description of the types of businesses that may be affected, using standard industrial classification codes, together with information on the number of small, medium and large businesses within those types.

Sec. 4. 5 MRSA §8057-A is enacted to read:

§8057-A. Periodic meetings

State agencies shall conduct periodic informal meetings with parties affected by agency regulatory decision making to discuss the efficiency of the rule development process, the use and utility of negotiation techniques in rule development, the direct and indirect costs and benefits, the intended impact of agency rules generally and ways in which the rule development process can be improved. The agency shall report to the Governor on steps it has taken as a consequence of this meeting, including plans for periodic future meetings for this same purpose. Meetings held pursuant to this provision shall be scheduled at least once a year and notice shall be provided to those persons listed in section 8053, subsection 1, paragraph A.

STATEMENT OF FACT

The purpose of this bill is to implement the terms of Executive Order 13, fiscal year 1985-86 dealing with regulatory reform. As noted in the Executive Order, "decisions that reflect a balanced approach to protecting the public health and welfare are inherently beneficial."

In addition to implementing the Executive Order, section 2 of this bill also imposes a prohibition on extensive changes from proposed to final rules, without allowing opportunity for involvement by those who did not participate in the process because they may not have been affected by a proposed rule, but are affected by the final rule, adopted after the record has closed.

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