

MAINE STATE LEGISLATURE

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(New Draft of H.P. 132, L.D. 161)
(New Title)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1651

H.P. 1210 House of Representatives, May 21, 1987
Reported by Representative CARROLL from the Committee on
State and Local Government and printed under Joint Rule 2.
EDWIN H. PERT, Clerk
Original bill submitted by the Joint Standing Committee
on State and Local Government pursuant to Joint Rule 19.

STATE OF MAINE

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

1 **AN ACT to Establish Greater Communication in**
2 **the Rule-making Process and to Provide**
3 **Better Standards for the Adoption of**
4 **Rules.**
5

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

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

10 **A. "Rule" means the whole or any part of every**
11 **regulation, standard, code, statement of policy,**
12 **or other agency statement of general applicability,**
13 **including the amendment, suspension or repeal**
14 **of any prior rule, that is or is intended to be**

1 judicially enforceable and implements, interprets
2 or makes specific the law administered by the
3 agency, or describes the procedures or practices
4 of the agency. ~~All rules promulgated after July~~
5 ~~17, 1979, shall, to the maximum extent feasible,~~
6 ~~as determined by the affected agency, use plain~~
7 ~~and clear English, which can be readily under-~~
8 ~~stood by the public.~~

9 Sec. 2. 5 MRSA §8052, sub-§5, as amended by PL
10 1985, c. 680, §1, is repealed and the following en-
11 acted in its place:

12 5. Written statement adopted. At the time of
13 adoption of any rule, the agency shall adopt a writ-
14 ten statement explaining the factual and policy basis
15 for the rule. The agency shall address the specific
16 comments and concerns expressed about any proposed
17 rule and state its rationale for adopting any changes
18 from the proposed rule, failing to adopt the sug-
19 gested changes or drawing findings and recommenda-
20 tions that differ from those expressed about the pro-
21 posed rule.

22 A. In the event that the same or similar com-
23 ments or concerns about a specific issue are ex-
24 pressed by different persons or organizations,
25 the agency may synthesize these comments and con-
26 cerns into a single comment that accurately re-
27 fects the meaning and intent of these comments
28 and concerns to be addressed by the agency.

29 B. A rule may not be adopted unless the adopted
30 rule is consistent with the terms of the proposed
31 rule, except to the extent that it determines
32 necessary to address concerns raised in comments
33 about the proposed rule or specific findings are
34 made supporting changes to the proposed rule. In
35 the event that an agency determines that a rule
36 which it intends to adopt will be substantially
37 different from the proposed rule, it shall seek
38 comments from the public concerning the changes
39 from the proposed rule. The agency shall not
40 adopt the rule for a period of 15 days from the
41 date comments are requested pursuant to this par-
42 agraph.

1 **Sec. 3. 5 MRSA §8052, sub-§5-A is enacted to**
2 **read:**

3 5-A. Impact on small businesses. In adopting
4 rules, the agency shall consider whether the rules
5 will impose a disproportionate economic burden on
6 small businesses and shall seek to reduce the burdens
7 through flexible or simplified reporting requirements
8 and may seek to reduce burdens through flexible or
9 simplified timetables that take into account the re-
10 sources available to the affected small businesses,
11 clarification, consolidation or simplification of
12 compliance or reporting requirements, use of perform-
13 ance rather than design standards and exemption from
14 coverage of the rule where appropriate. For the pur-
15 poses of this subsection, small business shall mean
16 businesses which have 20 or fewer employees and gross
17 annual sales not exceeding \$2,500,000.

18 **Sec. 4. 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 to the Legislature in accordance
27 with subsection 3, a fact sheet providing the infor-
28 mation as described in section 8057-A, subsection 1.

29 A. In the event that an agency determines that a
30 rule which it intends to adopt will be substan-
31 tially different from the proposed rule, it shall
32 provide the Legislature with a revised fact sheet
33 with the information defined in section 8057-A,
34 subsection 1, as it relates to the substantially
35 different rule. The revised fact sheet shall be
36 provided to the Legislature in accordance with
37 subsection 3.

38 2. Regulatory agenda. The agency shall provide
39 copies of its agency regulatory agenda to the Legis-
40 lature at the time that the agenda is issued.

1 3. Submission of materials to the Legislature.
2 When an agency, pursuant to subsections 1 and 2, pro-
3 vides materials to the Legislature, it shall provide
4 them to the Executive Director of the Legislative
5 Council, who shall refer the materials to the appro-
6 priate committee or committees of the Legislature for
7 review. The agency shall provide sufficient copies
8 of the materials for each member of the appropriate
9 committee or committees.

10 4. Adopted rules. When an agency adopts rules,
11 is shall provide a copy of the adopted rule and the
12 statement required by section 8052, subsection 5, and
13 the checklist required by section 8056-A to the Law
14 and Legislative Reference Library which shall compile
15 the adopted rules by agency.

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 this
40 rule-making report card, the areas in which compli-
41 ance needs improvement and the means by which im-

1 provement can be achieved. The Secretary of State
2 shall also specify the agencies that have relatively
3 low compliance rates.

4 A. In the event that an agency is given a low or
5 fair compliance rating pursuant to this subsection,
6 the Secretary of State shall report any ensuing
7 low or fair compliance rates with respect
8 to any rule proposed or adopted by that agency to
9 the appropriate joint standing committee or com-
10 mittees of the Legislature until the agency is
11 given a good compliance rating.

12 Sec. 6. 5 MRSa §8057-A is enacted to read:

13 §8057-A. Preparation and adoption of rules

14 In preparing and adopting rules, each agency
15 shall strive to the greatest possible extent to fol-
16 low the procedure defined in this section.

17 1. Preparation of rules. At the time that an
18 agency is preparing a rule, the agency shall consider
19 the goals and objectives for which the rule is being
20 proposed, possible alternatives to achieve the goals
21 and objectives and the estimated impact of the rule.
22 The agency's estimation of the impact of the rule
23 shall be based on the information available to the
24 agency and any analyses conducted by the agency or at
25 the request of the agency. The agency shall estab-
26 lish a fact sheet that provides the citation of the
27 statutory authority of the rule. In addition, the
28 agency, to the best of its ability, shall also in-
29 clude in the fact sheet the following:

30 A. The principal reasons for the rule;

31 B. A comprehensive but concise description of
32 the rule that accurately reflects the purpose and
33 operation of the rule;

34 C. An estimate of the fiscal impact of the rule;

35 D. A description of the economic impact of the
36 rule including effects that cannot be quantified
37 in monetary terms;

1 E. A definition and examples of the major inter-
2 est groups and types of businesses that will be
3 affected by the rule and how they will be af-
4 ected; and

5 F. A description of the benefits of the rule in-
6 cluding those that cannot be quantified.

7 2. Public comment period. During the public
8 comment period and prior to adoption of any rule, the
9 agency shall strive to obtain and evaluate informa-
10 tion from the public and other information reasonably
11 available to the agency with respect to the provi-
12 sions in subsection 1.

13 3. Adoption of rules. At the time of adoption
14 of any rule, the agency shall file with the Secretary
15 of State and the Law and Legislative Reference Li-
16 brary the information developed by the agency pursu-
17 ant to subsections 1 and 2.

18 Sec. 7. 5 MRSA §§8060 to 8063 are enacted to
19 read:

20 §8060. Regulatory agenda

21 Each agency with the authority to adopt rules
22 shall issue to the appropriate joint standing commit-
23 tee or committees of the Legislature and to the Sec-
24 retary of State an agency regulatory agenda as pro-
25 vided in this section.

26 1. Contents of agenda. Each agency regulatory
27 agenda to the maximum possible extent shall contain
28 the following information:

29 A. A list of rules that the agency expects to
30 propose prior to the next regulatory agenda due
31 date;

32 B. The statutory or other basis for adoption of
33 the rule;

34 C. The purpose of the rule;

35 D. The contemplated schedule for adoption of the
36 rule;

1 E. An identification and listing of potentially
2 benefited and regulated parties; and

3 F. A list of all emergency rules adopted since
4 the previous regulatory agenda due date.

5 2. Due date. A regulatory agenda must be issued
6 prior to 100 days after adjournment of each regular
7 session of the Legislature.

8 3. Legislative copies. The agency shall provide
9 copies of the agency regulatory agenda to the Legis-
10 lature as provided in section 8053-A.

11 4. Availability. An agency which issues an
12 agency regulatory agenda shall provide copies to in-
13 terested persons.

14 5. Legislative review of agency regulatory agen-
15 das. Each regulatory agenda shall be reviewed by the
16 appropriate joint standing committee of the Legisla-
17 ture at a meeting called for that purpose. The com-
18 mittee may review more than one agenda at a meeting.

19 6. Application. Nothing in this section or sec-
20 tion 8053-A, may be construed to prohibit agencies
21 from adopting emergency rules or rules that have not
22 been listed or included in the regulatory agenda pur-
23 suant to this section.

24 §8061. Licensing and commodity boards

25 1. Review by commissioner. Prior to December 1,
26 1987, the commissioner of the department in which is
27 located an occupational and professional licensing
28 board or a commodity or product protection and promo-
29 tion board, as those boards are described in section
30 12004, subsections 1 and 9, shall review the rules
31 proposed by the board, following the effective date
32 of this section, and shall issue a report to the ap-
33 propriate joint standing committee of the Legislature
34 evaluating those rules according to the following
35 criteria:

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

1 B. Whether the board's rules are consistent with
2 legislative intent; and

3 C. Whether the board accurately complies with
4 the requirements of this subchapter relating to
5 rulemaking.

6 2. Subsequent review. Each year after 1987, the
7 commissioner shall evaluate rules proposed by the
8 board during that year and submit a report containing
9 the results of the evaluation to the appropriate
10 joint standing committee of the Legislature by the
11 same date that regulatory agendas are due as speci-
12 fied in section 8060.

13 §8062. Style

14 All rules and any other materials required by
15 this subchapter to be provided to the public or to
16 the Legislature shall, to the maximum extent feasi-
17 ble, use plain and clear English, which can readily
18 be understood by the general public. The use of
19 technical language shall be avoided to the greatest
20 possible extent.

21 §8063. Performance standards

22 Each agency shall strive to the greatest possible
23 degree to establish performance standards by January
24 1, 1989, which shall be adopted in accordance with
25 the Maine Administrative Procedure Act, Title 5,
26 chapter 375. The Secretary of State, pursuant to
27 section 8056-A, subsection 3, shall report the degree
28 to which the provisions of this section have been im-
29 plemented by each agency.

30 1. Definition. For the purpose of this section,
31 "performance standards" means established, printed
32 and measurable criteria for activities regulated by
33 the State which shall be in compliance with the cri-
34 teria or standards in order to be granted a license,
35 permit, authorization or certification which is re-
36 quired prior to undertaking these activities.

37 Sec. 8. Codification of rules. The Secretary of
38 State shall index all state agency rules by subject
39 matter and by agency no later than July 1, 1988. The

1 Secretary of State shall investigate the cost of cod-
2 ification of state agency rules with the index estab-
3 lished pursuant to this Act and shall consider the
4 cost for contracting this responsibility with private
5 resources. The Secretary of State shall report the
6 findings of the investigation to the Joint Standing
7 Committee on State and Local Government by December
8 1, 1987.

9 Sec. 9. Appropriation. The following funds are
10 appropriated from the General Fund to carry out the
11 purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
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12

13 LEGISLATURE

14 Legislature

15 Personal Services	\$14,300	\$14,300
16 All Other	19,000	19,000

17 Provides funds to
18 meet legislative
19 per diem, travel
20 and related ex-
21 penses associated
22 with "regulatory
23 agenda" public
24 hearings.

25		
26 Total	<u>\$33,300</u>	<u>\$33,300</u>

27 SECRETARY OF STATE, DE-
28 PARTMENT OF THE

29 Administration - Sec-
30 retary of State

31 Positions	(1)	(1)
32 Personal Services	\$16,000	\$16,000
33 All Other	725	725

1 Provides funds for
2 one clerk-typist
3 II to assist in
4 the rule-making
5 process as revised
6 by this legisla-
7 tion.

8			
9	Total	<u>\$16,725</u>	<u>16,725</u>
10	TOTAL APPROPRIATION	\$50,025	\$50,025

11 FISCAL NOTE

12 In addition to the General Fund appropriations
13 referred to in section 9 of the new draft, this leg-
14 islation will result in the various departments and
15 agencies of State Government experiencing additional
16 costs in their rule-making process, the exact nature
17 of which cannot be determined. The Legislature and
18 Secretary of State will experience additional costs
19 associated with the receipt and filing of agency
20 rules which can be absorbed within existing re-
21 sources.

22 STATEMENT OF FACT

23 The purpose of this new draft is to provide more
24 pertinent and comprehensive information relating to
25 rules for Legislature use, to help streamline the
26 regulatory process and to provide more notice to the
27 public and the legislature with respect to the in-
28 tended adoption of rules that are substantially dif-
29 ferent from proposed rules.

30 This new draft proposes to provide legislators
31 with copies of fact sheets concerning proposed rules
32 in lieu of copies of the proposed rules. The fact
33 sheets are intended to be sufficiently descriptive
34 and accurate to give Legislators a good understanding
35 of the proposed rule.

1 In the event that a rule intended for adoption is
2 substantially different from the proposed rule, the
3 agency will provide new fact sheets to the Legisla-
4 ture and public notice. No substantially revised
5 rule may be adopted until 15 days following notice to
6 the public and the Legislature.

7 This new draft requires agencies, to the best of
8 their ability, to establish performance standards by
9 January 1, 1989. These standards will be established
10 by the rule-making process. Thus, an applicant for a
11 state regulatory agency, license, permit, authoriza-
12 tion or certification who can show that his technolo-
13 gy or procedure meets the specific standards, may be
14 able to obtain authorization more quickly than is
15 possible at the present time.

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