

MAINE STATE LEGISLATURE

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(EMERGENCY)
(NEW DRAFT OF H.P. 1511, L.D. 2061)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2537

H.P. 1854 House of Representatives, March 16, 1988
Reported by Representative WENTWORTH from the Committee
on State and Local Government and printed under Joint Rule 2.
EDWIN H. PERT, Clerk
Original bill sponsored by Representative SHELTRA of
Biddeford. Cosponsored by Representatives JACQUES of
Waterville, LOOK of Jonesboro and Senator BALDACCI of
Penobscot.

STATE OF MAINE

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

1 AN ACT to Provide for Effective and Timely
2 Public Notice of Hearings Conducted by State
3 Boards and Agencies.
4

5 Emergency preamble. Whereas, Acts of the
6 Legislature do not become effective until 90 days
7 after adjournment unless enacted as emergencies; and

8 Whereas, public representation at hearings

1 conducted by state boards and agencies is essential in
2 resolving matters directly affecting the public health
3 and welfare; and

4 Whereas, public participation is limited by
5 ineffective public notification practices; and

6 Whereas, newspaper notices required by law are
7 often in small print and buried in the legal section
8 of the newspaper; and

9 Whereas, inadequate mailing lists maintained by
10 state boards and agencies, combined with short notice
11 periods further limit effective and timely notice; and

12 Whereas, in the judgment of the Legislature, these
13 facts create an emergency within the meaning of the
14 Constitution of Maine and require the following
15 legislation as immediately necessary for the
16 preservation of the public peace, health and safety;
17 now, therefore,

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

20 Sec. 1. 5 MRSA §9051-A is enacted to read:

21 §9051-A. Notice of environmental agency adjudicatory
22 proceedings

23 Whenever adjudicatory hearings are held by the
24 Department of Conservation, the Department of
25 Environmental Protection and the Board of Pesticides
26 Control, the hearings shall be held in accordance with
27 the provisions of this section.

28 1. Notice of opportunity for hearing; license
29 applications with substantial public interest. When
30 the applicable law or the Constitution of Maine
31 requires that an opportunity for a hearing be provided
32 or an agency deems in any proceeding that a
33 substantial public interest is involved, notice shall
34 be given as follows.

35 A. Notice of the pending license application

1 shall be provided 30 days next prior to the date
2 of the expected date of an agency decision.
3 Notice shall be provided by mail to:

4 (1) The person or persons whose legal
5 rights, duties or privileges are at issue;

6 (2) The municipality or municipalities
7 affected by the license application, as
8 determined by the agency or board to the best
9 of its ability;

10 (3) The county, if the affected locality as
11 determined by the agency or board to the best
12 of its ability is an unorganized territory;

13 (4) The Legislators of the geographic area
14 or areas affected by the issue; and

15 (5) Persons who have made timely requests to
16 be notified of an agency deliberation of a
17 specific license application.

18 Interested persons may prepare and submit evidence
19 and argument to the agency and request a hearing
20 on the issue.

21 2. Hearing required. When a hearing is required
22 by the Constitution of Maine, the applicable law or by
23 agency regulation or has been requested pursuant to
24 subsection 1, notice of the hearing shall be provided
25 30 days next prior to the scheduled initial hearing.

26 A. The notice shall be provided by mail to:

27 (1) The person or persons whose legal
28 rights, duties or privileges are at issue;

29 (2) The municipality or municipalities
30 affected by the license application, as
31 determined by the agency or board to the best
32 of its ability;

33 (3) The county, if the affected locality as

1 determined by the agency or board to the best
2 of its ability is an unorganized territory;

3 (4) The Legislators of the geographic area
4 or areas affected by the issue;

5 (5) Intervenor;

6 (6) Persons who have made timely requests to
7 be notified of a specific hearing; and

8 (7) Persons who have filed a written
9 request, within the calendar year, to be
10 notified of hearings.

11 In the event that new hearings on a pending
12 license application or an existing license are
13 required, notice shall be provided 30 days next
14 prior to the scheduled hearing as herein
15 provided. When hearings are continued with
16 respect to a license application, this 30 days'
17 notice shall not apply.

18 3. Notice to the public. Notice to the public
19 shall be given by:

20 A. Publication twice in a newspaper of general
21 circulation in the area of the proposed activity
22 and in areas affected by the license application
23 as determined by the agency or board to the best
24 of its ability.

25 (1) Notice shall be published in plain and
26 clear English which can be readily understood
27 by the general public.

28 (2) The notice shall be published in the
29 legal notices section in a form readily
30 noticeable to the general public.

31 (3) With respect to notice of an opportunity
32 for a hearing pursuant to subsection 1, the
33 date of the first publication shall be 30
34 days next prior to the date of the expected
35 agency decision on the license

1 application.

2 (4) With respect to notice of a hearing
3 pursuant to subsection 2, the date of the
4 first publication shall be 30 days next prior
5 to the hearing.

6 (5) With respect to notice of an opportunity
7 for a hearing pursuant to subsection 1, the
8 date of the second publication shall be at
9 least 7 days and no more than 13 days before
10 the date of the expected agency decision on
11 the license application.

12 (6) With respect to notice of an opportunity
13 for a hearing pursuant to subsection 2, the
14 date of the second publication shall be at
15 least 7 days and no more than 13 days before
16 the date of the hearing;

17 B. The issuance of press releases describing the
18 date, place, time and nature of the hearing. The
19 press releases shall be sent at least 7 days and
20 no more than 13 days before the date of the
21 expected agency decision or the scheduled hearing
22 to the news desks of television stations and
23 newspapers of general circulation in the area of
24 the proposed activity; and

25 C. Public service radio and television
26 announcements. The first announcement shall be
27 provided to radio and television stations 21 days
28 next prior to the first hearing and the 2nd
29 announcement shall be provided no less than 7 and
30 no more than 10 days prior to the first scheduled
31 hearing.

32 Sec. 2. 5 MRSA §9052, sub-§5 is enacted to read:

33 5. Cancellation of change of hearing. If a
34 scheduled hearing is cancelled or postponed to a later
35 date, the agency shall provide timely notice to the
36 persons described in section 9051 and, if applicable,
37 to the persons and localities listed in section 9051-A
38 and other persons the agency is required to

1 notify or customarily notifies of hearings.

2 Sec. 3. 5 MRSA §9052-A is enacted to read:

3 §9052-A. Holding of hearings

4 Whenever an agency, including environmental
5 agencies, holds a hearing pursuant to this subchapter,
6 the agency shall strive to hold a hearing in the area
7 or areas of the State which are significantly affected
8 by the license application or which are concerned
9 about the issue.

10 Sec. 4. 12 MRSA §685-B, sub-§3, as amended by
11 PL 1977, c. 694, §228 to 231, is repealed and the
12 following enacted in its place:

13 3. Hearings and procedures. Hearings and
14 procedures conducted pursuant to this section shall be
15 subject to the provisions of this subsection.

16 A. Any person aggrieved by a decision of the
17 commission or its staff concerning any matter upon
18 which no hearing was held may petition the
19 commission for a hearing, within 30 days of that
20 decision. The commission shall respond within 30
21 days of receipt of the request by notifying the
22 petitioner in writing of the date, time and place
23 set for the requested hearing or of the denial of
24 the request.

25 B. The commission may determine on its own motion
26 to hold a hearing on an application, in which
27 event it shall hold the hearing within 45 days of
28 receiving the application.

29 C. Within 45 days after the commission adjourns
30 any hearing held under this subsection, it shall
31 make findings of fact and issue an order granting
32 or denying approval to the applicant to construct,
33 develop or operate the structure, subdivision or
34 development as proposed or granting such approval
35 upon such reasonable terms and conditions as the
36 commission determines appropriate.

37 D. If the commission determines to

1 act upon an application for approval without
2 hearing, the commission, as expeditiously as
3 possible, shall approve, with such terms and
4 conditions as deemed necessary, or disapprove the
5 application. In the event of a decision for
6 disapproval, the commission shall notify the
7 applicant and specify the grounds of disapproval
8 and inform the applicant of any right to request a
9 hearing.

10 E. All hearings and procedures conducted pursuant
11 to this section shall be subject to the Maine
12 Administrative Procedure Act, Title 5, chapter
13 375, subchapter IV, including the notice
14 requirements in section 9051-A.

15 Emergency clause. In view of the emergency
16 cited in the preamble, this Act shall take effect when
17 approved.

18 STATEMENT OF FACT

19 The purpose of this new draft is to afford
20 adequate public input into environmental agency
21 adjudicatory proceedings. One of the means of
22 achieving this purpose is to provide satisfactory
23 notice to persons and places with an interest in the
24 proceeding or who or which may be affected directly or
25 indirectly by the proceeding. To facilitate this
26 process, with respect to environmental agency licenses
27 and permit applications that do not require hearings,
28 this new draft requires notice by mail be provided, at
29 least 30 days prior to the expected date of an agency
30 decision, to the following:

31 1. The person or persons whose legal rights,
32 duties or privileges are at issue;

33 2. The municipality or municipalities affected by
34 the license application, as determined by the agency
35 to the best of its ability;

1 3. The county, if the affected locality as
2 determined by the agency to the best of its ability is
3 an unorganized territory;

4 4. The Legislators of the area affected by the
5 issue; and

6 5. Persons who have made timely requests to be
7 notified of an agency deliberation of a specific
8 license application.

9 With respect to environmental agency hearings,
10 this new draft requires notice by mail, at least 30
11 days prior to the date of the hearings, to the persons
12 and localities listed above as well as to intervenors
13 and persons who have made requests within the calendar
14 year to be notified of hearings.

15 This new draft also requires that notice of an
16 opportunity for a hearing or notice of a scheduled
17 hearing be published in a newspaper of general
18 circulation in the area of the proposed activity and
19 other geographic areas affected by the proposed
20 activity as determined by the agency.

21 The first notice will be published 30 days prior
22 to the date of a hearing or 30 days prior to the
23 expected date of an agency decision on license
24 applications not requiring a hearing. The 2nd notice
25 will be published no less than 7 days and no more than
26 13 days prior to the date of a hearing or no less than
27 7 and no more than 13 days prior to the expected date
28 of an agency decision on license applications that do
29 not require a hearing.

30 This new draft defines environmental agencies as
31 the Department of Conservation and the Department of
32 Environmental Protection which includes the Maine Land
33 Use Regulation Commission and the Board of
34 Environmental Protection. The Board of Pesticides
35 Control within the Department of Agriculture, Food and
36 Rural Resources is also included as an environmental
37 agency.

1 This new draft also provides that any state agency
2 or board shall give timely notice of hearing
3 cancellations and postponements. Whenever any state
4 agency or board holds a hearing on a license
5 application or other issue which is of significant
6 interest to or significantly affects an area, the
7 agency or board will strive to hold a hearing in that
8 geographic area or areas.

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