

MAINE STATE LEGISLATURE

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(New Title)
(NEW DRAFT OF H.P. 132, L.D. 161)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2611

H.P. 1912 House of Representatives, April 4, 1988
Reported by the Majority 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-EIGHT

1 **AN ACT to Establish Greater**
2 **Communication in the Rule-Making Process and to**
3 **Provide 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:**

1 A. "Rule" means the whole or any part of every
2 regulation, standard, code, statement of policy,
3 or other agency statement of general
4 applicability, including the amendment, suspension
5 or repeal of any prior rule, that is or is
6 intended to be judicially enforceable and
7 implements, interprets or makes specific the law
8 administered by the agency, or describes the
9 procedures or practices of the agency. All
10 rules promulgated after July 1, 1979, shall, to
11 the maximum extent feasible, as determined by the
12 effective agency, use plain and clear English,
13 which can be readily understood by the public.

14 Sec. 2. 5 MRSA §8051-A is enacted to read:

15 §8051-A. Appointment of liaison

16 The commissioner or director of each state agency
17 shall designate a person to serve as a liaison between
18 the agency and the general public, the Secretary of
19 State and the office of the Attorney General with
20 respect to rulemaking. The liaison shall serve as a
21 representative of the agency with respect to providing
22 information about agency rules. In addition, the
23 liaison shall be responsible for implementing the
24 procedural provisions of chapter 375, subchapter II.

25 Sec. 3. 5 MRSA §8052, sub-§5, as amended by PL
26 1985, c. 680, §1, is repealed and the following
27 enacted in its place:

28 5. Written statement adopted. At the time of
29 adoption of any rule, the agency shall adopt a written
30 statement explaining the factual and policy basis for
31 the rule. The agency shall address the specific
32 comments and concerns expressed about any proposed
33 rule and state its rationale for adopting any changes
34 from the proposed rule, failing to adopt the suggested
35 changes or drawing findings and recommendations that
36 differ from those expressed about the proposed rule.

1 A. In the event that the same or similar comments
2 or concerns about a specific issue are expressed
3 by different persons or organizations, the agency
4 may synthesize these comments and concerns into a
5 single comment that accurately reflects the
6 meaning and intent of these comments and concerns
7 to be addressed by the agency.

8 B. A rule may not be adopted unless the adopted
9 rule is consistent with the terms of the proposed
10 rule, except to the extent that the agency
11 determines that it is necessary to address
12 concerns raised in comments about the proposed
13 rule, or specific findings are made supporting
14 changes to the proposed rule. In the event that
15 an agency determines that a rule which it intends
16 to adopt will be substantially different from the
17 proposed rule, it shall seek comments from the
18 public concerning the changes from the proposed
19 rule. The agency shall not adopt the rule for a
20 period of 15 days from the date comments are
21 requested pursuant to this paragraph.

22 Sec. 4. 5 MRSA §8052, sub-§5-A is enacted to
23 read:

24 5-A. Impact on small businesses. In adopting
25 rules, the agency shall consider whether the rules
26 will impose a disproportionate economic burden on
27 small businesses and shall seek to reduce the burdens
28 through flexible or simplified reporting requirements
29 and may seek to reduce burdens through flexible or
30 simplified timetables that take into account the
31 resources available to the affected small businesses.
32 The agency may consider clarification, consolidation
33 or simplification of compliance or reporting
34 requirements, use of performance rather than design
35 standards and exemption from coverage of the rule when
36 appropriate. For the purposes of this subsection,
37 small business shall mean businesses which have 20 or
38 fewer employees and gross annual sales not exceeding
39 \$2,500,000.

40 Sec. 5. 5 MRSA §8053-A, as amended by PL 1987,
41 c. 402, Pt. A, §61, is repealed and the following

1 enacted in its place:

2 §8053-A. Notice to legislative committees

3 1. Proposed rules. At the time of giving notice
4 of rulemaking under section 8053 or within 10 days
5 following the adoption of an emergency rule, the
6 agency shall provide to the Legislature, in accordance
7 with subsection 3, a fact sheet providing the
8 information as described in section 8057-A, subsection
9 1.

10 A. In the event that an agency determines that a
11 rule which it intends to adopt will be
12 substantially different from the proposed rule, it
13 shall provide the Legislature with a revised fact
14 sheet with the information defined in section
15 8057-A, subsection 1, as it relates to the
16 substantially different rule. The revised fact
17 sheet shall be provided to the Legislature in
18 accordance with subsection 3.

19 2. Regulatory agenda. The agency shall provide
20 copies of its agency regulatory agenda to the
21 Legislature at the time that the agenda is issued.

22 3. Submission of materials to the Legislature.
23 When an agency, pursuant to subsections 1 and 2,
24 provides materials to the Legislature, it shall
25 provide them to the Executive Director of the
26 Legislative Council, who shall refer the materials to
27 the appropriate committee or committees of the
28 Legislature for review. The agency shall provide
29 sufficient copies of the materials for each member of
30 the appropriate committee or committees.

31 4. Adopted rules. When an agency adopts rules,
32 it shall provide a copy of the adopted rules, the
33 statement required by section 8052, subsection 5 and
34 the checklist required by section 8056-A to the
35 Secretary of State who shall compile the adopted rules
36 by agency. The Secretary of State shall provide
37 copies of official rules and the written statement
38 defined in section 8052, subsection 5 for each rule to

1 the Law and Legislative Reference Library.

2 **Sec. 6. 5 MRSA §8056-A is enacted to read:**

3 §8056-A. Oversight

4 1. Monitoring. The Secretary of State shall
5 monitor the compliance of all agencies with this
6 subchapter. The Secretary of State shall establish
7 and implement a checklist which shall be completed for
8 each rule which is proposed after January 1, 1989.
9 The purpose of the checklist is to provide an
10 indication of the agency's compliance with rule-making
11 requirements. It shall include the timing of filing
12 and notices as well as other requirements, such as the
13 adequacy and clarity of explanatory and fiscal
14 information.

15 2. Technical assistance. The Secretary of State
16 shall develop drafting instructions for use by
17 agencies which propose rules under this subchapter.
18 In addition, the Secretary of State shall provide
19 advice and assistance to any agency regarding the
20 drafting of rules and supporting materials and the
21 other requirements of this subchapter.

22 3. Report. The Secretary of State shall report
23 to the Governor and the joint standing committee of
24 the Legislature having jurisdiction over state and
25 local government prior to February 1st of each year
26 with respect to agency compliance with the provisions
27 of sections 8052, 8053-A and 8060. The Secretary of
28 State shall specify this rule-making report card, the
29 areas in which compliance needs improvement and the
30 means by which improvement can be achieved. The
31 Secretary of State shall also specify the agencies
32 that have relatively low compliance rates.

33 A. In the event that an agency is given a low or
34 fair compliance rating pursuant to this
35 subsection, the Secretary of State shall report
36 any ensuing low or fair compliance rates with
37 respect to any rule proposed or adopted by that

1 agency to the appropriate joint standing committee
2 or committees of the Legislature until the agency
3 is given a good compliance rating.

4 Sec. 7. 5 MRSA §8057-A is enacted to read:

5 §8057-A. Preparation and adoption of rules

6 In preparing and adopting rules, each agency shall
7 strive to the greatest possible extent to follow the
8 procedure defined in this section.

9 1. Preparation of rules. At the time that an
10 agency is preparing a rule, the agency shall consider
11 the goals and objectives for which the rule is being
12 proposed, possible alternatives to achieve the goals
13 and objectives and the estimated impact of the rule.
14 The agency's estimation of the impact of the rule
15 shall be based on the information available to the
16 agency and any analyses conducted by the agency or at
17 the request of the agency. The agency shall establish
18 a fact sheet that provides the citation of the
19 statutory authority of the rule. In addition, the
20 agency, to the best of its ability, shall also include
21 in the fact sheet the following:

22 A. The principal reasons for the rule;

23 B. A comprehensive but concise description of the
24 rule that accurately reflects the purpose and
25 operation of the rule;

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

27 D. A description of the economic impact of the
28 rule including effects that cannot be quantified
29 in monetary terms;

30 E. A definition and examples of the major
31 interest groups and types of businesses that will
32 be affected by the rule and how they will be
33 affected; and

34 F. A description of the benefits of the rule

1 including those that cannot be quantified.

2 2. Public comment period. During the public
3 comment period and prior to adoption of any rule, the
4 agency shall strive to obtain and evaluate information
5 from the public and other information reasonably
6 available to the agency with respect to the provisions
7 in subsection 1.

8 3. Adoption of rules. At the time of adoption of
9 any rule, the agency shall file with the Secretary of
10 State the information developed by the agency pursuant
11 to subsections 1 and 2. The Secretary of State shall
12 provide the Law and Legislative Reference Library with
13 copies of the information required by this subsection.

14 Sec. 8. 5 MRSA §§8060 to 8063 are enacted to
15 read:

16 §8060. Regulatory agenda

17 Each agency with the authority to adopt rules
18 shall issue to the appropriate joint standing
19 committee or committees of the Legislature and to the
20 Secretary of State an agency regulatory agenda as
21 provided in this section.

22 1. Contents of agenda. Each agency regulatory
23 agenda to the maximum possible extent shall contain
24 the following information:

25 A. A list of rules that the agency expects to
26 propose prior to the next regulatory agenda due
27 date;

28 B. The statutory or other basis for adoption of
29 the rule;

30 C. The purpose of the rule;

31 D. The contemplated schedule for adoption of the
32 rule;

33 E. An identification and listing of potentially

1 benefited and regulated parties; and

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

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

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

10 4. Availability. An agency which issues an
11 agency regulatory agenda shall provide copies to
12 interested persons.

13 5. Legislative review of agency regulatory
14 agendas. Each regulatory agenda shall be reviewed by
15 the appropriate joint standing committee of the
16 Legislature at a meeting called for that purpose. The
17 committee may review more than one agenda at a meeting.

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

23 §8061. Licensing and commodity boards

24 1. Review by commissioner. Prior to December 1,
25 1988, the commissioner of the department in which is
26 located an occupational and professional licensing
27 board or a commodity or product protection and
28 promotion board, as those boards are described in
29 section 12004, subsections 1 and 9, shall review the
30 rules proposed by the board, following the effective
31 date of this section, and shall issue a report to the
32 appropriate joint standing committee of the
33 Legislature evaluating those rules according to the
34 following criteria:

35 A. Whether the board's rules are consistent with

1 its rule-making authority;

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

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

7 2. Subsequent review. Each year after 1988, the
8 commissioner shall evaluate rules proposed by the
9 board during that year and submit a report containing
10 the results of the evaluation to the appropriate joint
11 standing committee of the Legislature by the same date
12 that regulatory agendas are due as specified in
13 section 8060.

14 §8062. Style

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

22 §8063. Performance standards

23 When legislation authorizing any regulated
24 activity requires that certain criteria be met in
25 order that any license, permit, authorization, or
26 certification to undertake the regulated activity be
27 granted, and when, during the public comment period,
28 an agency determines that performance standards are
29 needed or are appropriate in assisting regulated
30 parties to comply with the criteria, such standards
31 shall be developed during the rule-making process and
32 incorporated into adopted rules. An agency shall
33 state its rationale, in the written statement
34 described in section 8052, subsection 5, for failing
35 to adopt performance standards related to statutory
36 criteria.

37 Sec. 9. 5 MRSa §11112, first ¶, as amended by

1 PL 1985, c. 737, Pt. B, §15, is further amended to
2 read:

3 Any group of 100 or more registered voters, who
4 have a substantial interest in a rule, or any person
5 who may be directly, substantially and adversely
6 affected by the application of a rule, may file an
7 application for review with the executive director.
8 With respect to any application or petition for review
9 pursuant to this section, the petition or application
10 shall be verified and certified in the same manner
11 provided in Title 21-A, section 354, subsection 7.
12 The applicant shall state with specificity on a form
13 prepared by the director, the following:

14 **Sec. 10. Commission on codification of**
15 **rules.**

16 1. Membership. There is established the
17 Commission on Codification of Rules to consist of 11
18 members:

19 A. The Speaker of the House and the President of
20 the Senate shall each appoint 2 persons. One
21 person shall be a member of the Joint Standing
22 Committee on Judiciary and the other person shall
23 be a member of the Joint Standing Cmmittee on
24 State and Local Government;

25 B. The Chief Justice of the Supreme Judicial
26 Court shall appoint a person to represent the
27 courts;

28 C. The Governor shall appoint 3 persons. One
29 person shall represent the Governor's office and 2
30 persons shall represent that part of the private
31 sector with experiance in the use of rules and the
32 rule-making process;

33 D. The Secretary of State, or the secretary's
34 designee who shall be the Deputy Secretary of
35 State for Public Administration;

36 E. The Attorney General, or the Attorney
37 General's designee who shall be very knowledgeable

1 of the Maine Administrative Procedure Act, Title
2 5, chapter 375; and

3 F. The State Law Librarian.

4 2. Chairman. The President of the Senate and the
5 Speaker of the House shall jointly appoint the
6 chairman from among the legislative members.

7 3. Appointment of members; first meeting. All
8 members of the commission shall be appointed within
9 the 90-day period following the adjournment of the
10 Second Regular Session of the 113th Legislature. The
11 first meeting of the commission shall be held no later
12 than September 1, 1988.

13 4. Duties and responsibilities. The commission
14 shall investigate various alternative codifications of
15 rules and the cost of each alternative. In
16 undertaking this investigation the commission shall
17 consider:

18 A. The various types of formats that may be used;

19 B. The various types of indexes for a code of
20 rules, particularly subject matter indexes;

21 C. Capital equipment required;

22 D. Personnel required and the type of expertise
23 needed to undertake a codification;

24 E. The processes of codification to include
25 contracting all or some of the tasks of
26 codification with the private sector; and

27 F. The distribution of a code of rules to include
28 prices to be charged to public agencies.

29 5. Report. The commission shall report its
30 findings and its recommendation for a code of rules to
31 the Joint Standing Committee on State and Local
32 Government no later than March 15, 1989.

33 6. Compensation. The legislative members shall

1 be compensated at the legislative per diem rate
2 including expenses for meetings held when the
3 Legislature is not in session. All other members
4 shall receive expense reimbursement only.

5 7. Staff assistance. The Legislative Council
6 shall provide for the staffing of the commission.

7 A. Prior to the effective date of the commission
8 and the first meeting of the commission, the staff
9 shall obtain necessary background information and
10 materials for the commission.

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

14 1988-89

15 LEGISLATURE

16 Commission on Codification of Rules

17	Personal Services	\$1,100
18	All Other	3,800

19 Provides funds for the
20 per diem, travel and
21 related expenses of
22 the Commission on
23 Codification of Rules.

24		
25	Total	<u>\$4,900</u>

26 SECRETARY OF STATE, DEPARTMENT OF THE

27 Administration - Secretary of State

28	Personal Services	\$1,416
29	All Other	1,000
30	Capital Expenditures	775

1	Provides funds to	
2	update costs	
3	associated with the	
4	position funded in	
5	Public Law 1987,	
6	chapter 349, Part A	
7	for the purposes of	
8	this Act. Also funds	
9	additional copying	
10	costs associated with	
11	the provision of rules	
12	to the Law and	
13	Legislative Reference	
14	Library.	
15		
16	Total	<u>\$3,191</u>
17		
18	Total Appropriations	<u>\$8,091</u>

19 FISCAL NOTE

20 This new draft requires General Fund appropriations
21 in fiscal year 1989 of \$4,900 to the legislative
22 account to fund the proposed Commission on the
23 Codification of Rules, and \$3,191 in the Secretary of
24 State's administrative account to augment funds
25 appropriated in Public Law 1987, chapter 349, Part A
26 for a position associated with the new rule-making
27 procedures. Funds to allow the various joint standing
28 committees of the Legislature to review agency
29 regulation agendas were also appropriated in Public
30 Law 1987, chapter 349, Part A.

31 Section 2 of the new draft will create new costs to
32 the various departments and agencies of State
33 Government, the exact nature of which cannot be
34 determined. It is anticipated that some agencies will
35 be able to absorb the cost of liaison activities in
36 regard to rulemaking; other agencies, however, may
37 experience significant costs which cannot be absorbed.

1 STATEMENT OF FACT

2 The purpose of this new draft is to provide more
3 pertinent and comprehensive information relating to
4 rules for Legislature use, to help streamline the
5 regulatory process and to provide more notice to the
6 public and the Legislature with respect to the
7 intended adoption of rules that are substantially
8 different from proposed rules.

9 This new draft proposes to provide Legislators with
10 copies of fact sheets concerning proposed rules in
11 lieu of copies of the proposed rules. The fact sheets
12 are intended to be sufficiently descriptive and
13 accurate to give Legislators a good understanding of
14 the proposed rule.

15 In the event that a rule intended for adoption is
16 substantially different from the proposed rule, the
17 agency will provide new fact sheets to the Legislature
18 and public notice. No substantially revised rule may
19 be adopted until 15 days following notice to the
20 public and the Legislature.

21 This new draft requires agencies, to the best of
22 their ability, to establish performance standards by
23 January 1, 1989. These standards will be established
24 by the rule-making process. Thus, an applicant for a
25 state regulatory agency, license, permit,
26 authorization or certification who can show that the
27 applicant's technology or procedure meets the specific
28 standards, may be able to obtain authorization more
29 quickly than is possible at the present time.

30 5127032488