

MAINE STATE LEGISLATURE

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

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2612

H.P. 1913 House of Representatives, April 4,, 1988
Reported by the Minority 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 Make Changes in the
2 Rule-Making Process.
3

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

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

8 A. "Rule" means the whole or any part of every
9 regulation, standard, code, statement of policy,
10 or other agency statement of general

1 applicability, including the amendment, suspension
2 or repeal of any prior rule, that is or is
3 intended to be judicially enforceable and
4 implements, interprets or makes specific the law
5 administered by the agency, or describes the
6 procedures or practices of the agency. All rules
7 promulgated after July 17, 1979, shall, to the
8 maximum extent feasible, as determined by the
9 affected agency, use plain and clear English,
10 which can be readily understood by the public.

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

12 §8051-A. Appointment of liaison

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

22 Sec. 3. 5 MRSA §8052, sub-§5, as amended by PL
23 1985, c. 680, §1, is repealed and the following
24 enacted in its place:

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

34 A. In the event that the same or similar comments
35 or concerns about a specific issue are expressed
36 by different persons or organizations, the agency
37 may synthesize these comments and concerns into a
38 single comment that accurately reflects the
39 meaning and intent of these comments and concerns

1 to be addressed by the agency.

2 B. Where a proposed rule is subject to the public
3 hearing or relevant information requirements of
4 section 8052 and an agency determines that a rule
5 it intends to adopt differs substantially from the
6 proposed rule in a manner not addressed in
7 hearings or in statements and arguments filed,
8 agencies shall extend by 15 days the period in
9 which public comment and relevant information is
10 sought and submit a revision of the fact sheet
11 required under section 8057-A.

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

14 5-A. Impact on small businesses. In adopting
15 rules, the agency shall consider whether the rules
16 will impose a disproportionate economic burden on
17 small businesses and shall seek to reduce the burdens
18 through flexible or simplified reporting requirements
19 and may seek to reduce burdens through flexible or
20 simplified timetables that take into account the
21 resources available to the affected small businesses,
22 clarification, consolidation or simplification of
23 compliance or reporting requirements, use of
24 performance rather than design standards and exemption
25 from coverage of the rule where appropriate. For the
26 purposes of this subsection, small business means
27 businesses which have 20 or fewer employees and gross
28 annual sales not exceeding \$2,500,000.

29 Sec. 5. 5 MRSA §8053-A, as amended by PL 1987,
30 c. 402, Pt. A, §§60 and 61, is repealed.

31 Sec. 6. 5 MRSA §8053-B is enacted to read:

32 §8053-B. Notice to legislative committees

33 1. Proposed rules. At the time of giving notice
34 of rulemaking under section 8053 or within 10 days
35 following the adoption of an emergency rule, the
36 agency shall provide to the Legislature in accordance
37 with subsection 3, a fact sheet providing the
38 information as described in section 8057-A, subsection
39 1.

1 A. In the event that an agency determines that a
2 rule which it intends to adopt will, be
3 substantially different from the proposed rule, it
4 shall provide the Legislature with a revised fact
5 sheet with the information defined in section
6 8057-A, subsection 1, as it relates to the
7 substantially different rule. The revised fact
8 sheet shall be provided to the Legislature in
9 accordance with subsection 3.

10 2. Regulatory agenda. The agency shall provide
11 copies of its agency regulatory agenda to the
12 Legislature at the time that the agenda is issued.

13 3. Submission of materials to the Legislature.
14 When an agency, pursuant to subsections 1 and 2,
15 provides materials to the Legislature, it shall
16 provide them to the Executive Director of the
17 Legislative Council, who shall refer the materials to
18 the appropriate committee or committees of the
19 Legislature for review. The agency shall provide
20 sufficient copies of the materials for each member of
21 the appropriate committee or committees.

22 4. Adopted rules. When an agency adopts rules,
23 it shall provide a copy of the adopted rule and the
24 statement required by section 8052, subsection 5, to
25 the Secretary of State who shall compile the adopted
26 rules by agency. The Secretary of State shall provide
27 copies of official rules and the written statement
28 defined in section 8052, subsection 5, for each rule
29 to the Law and Legislative Reference Library.

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

31 §8057-A. Preparation and adoption of rules

32 In preparing and adopting rules, each agency shall
33 strive to the greatest possible extent to follow the
34 procedure defined in this section.

35 1. Preparation of rules. At the time that an
36 agency is preparing a rule, the agency shall consider

1 the goals and objectives for which the rule is being
2 proposed, possible alternatives to achieve the goals
3 and objectives and the estimated impact of the rule.
4 The agency's estimation of the impact of the rule
5 shall be based on the information available to the
6 agency and any analyses conducted by the agency or at
7 the request of the agency. The agency shall establish
8 a fact sheet that provides the citation of the
9 statutory authority of the rule. In addition, the
10 agency, to the best of its ability, shall also include
11 in the fact sheet for existing rules and rules with a
12 fiscal impact greater than \$1,000,000 the following:

13 A. The principal reasons for the rule;

14 B. A comprehensive but concise description of the
15 rule that accurately reflects the purpose and
16 operation of the rule;

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

18 D. A description of the economic impact of the
19 rule, including effects that cannot be quantified
20 in monetary terms;

21 E. A definition and examples of the major
22 interest groups and types of businesses that will
23 be affected by the rule and how they will be
24 affected; and

25 F. A description of the benefits of the rule,
26 including those that cannot be quantified.

27 2. Public comment period. During the public
28 comment period and prior to adoption of any rule, the
29 agency shall strive to obtain and evaluate information
30 from the public and other information reasonably
31 available to the agency with respect to the provisions
32 in subsection 1.

33 3. Adoption of rules. At the time of adoption of
34 any rule, the agency shall file with the Secretary of
35 State the information developed by the agency pursuant
36 to subsections 1 and 2. The Secretary of State shall
37 provide the Law and Legislative Reference Library with

1 copies of the information required by this subsection.

2 Sec. 8. 5 MRSA §§8060 to 8062 are enacted to
3 read:

4 §8060. Regulatory agenda

5 Each agency with the authority to adopt rules
6 shall issue to the appropriate joint standing
7 committee or committees of the Legislature and to the
8 Secretary of State an agency regulatory agenda as
9 provided in this section.

10 1. Contents of agenda. Each agency regulatory
11 agenda, to the maximum extent possible, shall contain
12 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;

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

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

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

28 3. Legislative copies. The agency shall provide
29 copies of the agency regulatory agenda to the
30 Legislature as provided in section 8053-B.

31 4. Availability. An agency which issues an
32 agency regulatory agenda shall provide copies to

1 interested persons.

2 5. Legislative review of agency regulatory
3 agendas. Each regulatory agenda shall be reviewed by
4 the appropriate joint standing committee of the
5 Legislature at a meeting called for that purpose. The
6 committee may review more than one agenda at a meeting.

7 6. Application. Nothing in this section or
8 section 8053-B, may be construed to prohibit agencies
9 from adopting emergency rules or rules that have not
10 been listed or included in the regulatory agenda
11 pursuant to this section.

12 §8061. Style

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

20 §8062. Performance standards

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

34 Sec. 9. 5 MRSA §11112, first ¶, as amended by
35 PL 1985, c. 737, Pt. B, §15, is further amended to
36 read:

37 Any group of 100 or more registered voters, who

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

11 **Sec. 10. Commission on codification of rules**

12 1. **Membership.** There is established a Commission
13 on Codification of Rules, to consist of 11 members:

14 A. The Speaker of the House and the President of
15 the Senate shall each appoint 2 persons. One
16 person shall be a member of the Joint Standing
17 Committee on Judiciary and the other person shall
18 be a member of the Joint Standing Committee on
19 State and Local Government;

20 B. The Chief Justice of the Supreme Judicial
21 Court shall appoint a person to represent the
22 courts;

23 C. The Governor shall appoint 3 persons. One
24 person shall represent the Governor's office and 2
25 persons shall represent that part of the private
26 sector with experience in the use of rules and the
27 rule-making process;

28 D. The Secretary of State or the Secretary of
29 State's designee who shall be the Deputy Secretary
30 of State for public administration;

31 E. The Attorney General or the Attorney General's
32 designee who shall be very knowledgeable of the
33 Maine Administrative Procedure Act, the Maine
34 Revised Statutes, Title 5, chapter 375; and

35 F. The Director of the Law and Legislative
36 Reference Library.

1 2. Duties and responsibilities. The commission
2 shall investigate various alternative codifications of
3 rules and the cost of each alternative. In
4 undertaking this investigation the commission shall
5 consider:

- 6 A. The various types of formats that may be used;
- 7 B. The various types of indexes for a code of
8 rules, particularly subject matter indexes;
- 9 C. Capital equipment required;
- 10 D. Personnel required and the type of expertise
11 needed to undertake a codification;
- 12 E. The processes of codification to include
13 contracting all or some of the tasks of
14 codification with the private sector; and
- 15 F. The distribution of a code of rules to include
16 codification prices to be charged to public
17 agencies.

18 3. Report. The commission shall report its
19 findings and its recommendation for a code of rules to
20 the Joint Standing Committee on State and Local
21 Government no later than April 1, 1989.

22 4. Compensation. The legislative members shall
23 be compensated at the legislative per diem rate for
24 meetings held when the Legislature is not in session.
25 All other members shall receive expense reimbursement
26 only.

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

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32 Commission on Codification of Rules

1	Personal Services	\$1,100
2	All Other	3,800
3	Provides funds for the	
4	per diem, travel and	
5	related expenses of	
6	the Commission on	
7	Codification of Rules.	
8		
9	Total	<u>\$4,900</u>

10 FISCAL NOTE

11 This new draft requires General Fund appropriations
 12 in fiscal year 1988-89 of \$4,900 to the Legislative
 13 Account to fund the proposed Commission on the
 14 Codification of Rules. Funds to allow the various
 15 joint standing committees of the Legislature to review
 16 agency regulation agendas were also appropriated in
 17 Public Law 1987, chapter 349, Part A.

18 Section 2 of the new draft creates new costs to the
 19 various departments and agencies of State Government,
 20 the exact nature of which cannot be determined. It is
 21 anticipated that some agencies will be able to absorb
 22 the cost of liaison activities in regard to
 23 rulemaking; other agencies, however, may experience
 24 significant costs which cannot be absorbed.

25 STATEMENT OF FACT

26 This new draft removes the oversight of the
 27 Secretary of State over the rule-making process of
 28 executive branch agencies. In addition, this new
 29 draft removes the review by the Commissioner of
 30 Professional and Financial Regulation of rules
 31 proposed by professional and occupational licensing
 32 boards.

33 This new draft also provides that the expanded fact

1 sheet on rules provide a more comprehensive
2 description of the impact of rules will apply only to
3 existing rules and proposed rules with a fiscal impact
4 greater than \$1,000,000.

5 An 11-member Commission on the Codification of Rules
6 is created to investigate various alternative
7 codifications of rules and the costs of those
8 alternatives.

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