

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 813

H.P. 595

House of Representatives, March 16, 1989

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

Ed Pert

EDWIN H. PERT, Clerk

Presented by Representative DUFFY of Bangor.

Cosponsored by Representative JOSEPH of Waterville, Representative CAHILL of Mattawamkeag and Senator BERUBE of Androscoggin.

STATE OF MAINE

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

An Act to Subject Municipal Rulemaking to Statutory Administrative Procedures.



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

3 30-A MRSA c. 124 is enacted to read:

5 CHAPTER 124

7 MAINE MUNICIPAL ADMINISTRATIVE PROCEDURE ACT

9 SUBCHAPTER I

11 GENERAL PROVISIONS

13 §2731. Short title; purpose

15 1. Short title. This chapter shall be known and may be
17 cited as the Maine Municipal Administrative Procedure Act.

19 2. Purpose. The purpose of this chapter is to protect
21 private rights by providing the general public with the
23 opportunity for participation and oversight in the
25 regulation-making process at the local level. In order to ensure
27 that this opportunity will be available, this chapter requires
29 municipalities and quasi-municipal corporations to give public
31 notice of regulation-making and to consider the comments of the
33 general public prior to adopting regulations.

27 §2732. Definitions

29 As used in this Act, unless the context otherwise indicates,
31 the following terms have the following meanings.

33 1. Agency. "Agency" means any body of municipal government
35 authorized to adopt regulations and issue licenses, including a
37 board, bureau, commission, department or officer of the municipal
39 government and any quasi-municipal corporation as defined in
41 section 2604, subsection 3.

43 2. Agency member. "Agency member" means an individual
45 appointed or elected to the agency who is charged with that
47 agency's decision-making functions. It does not include counsel
49 to the agency or agency staff.

51 3. Final agency action. "Final agency action" means a
decision by an agency:

A. Which affects the legal rights, duties or privileges of
specific persons;

B. Is dispositive of all issues, legal and factual; and

C. For which no further recourse, appeal or review is
provided within the agency.

1
2
3 4. License. "License" includes the whole or any part of
4 any agency permit, certificate, approval, registration, charter
5 or similar form of permission required by law which represents an
6 exercise of the municipality's regulatory or police powers.

7
8 5. Licensing. "Licensing" means the administrative process
9 resulting in the grant, denial, renewal, revocation, suspension
10 or modification of a license.

11
12 6. Party. "Party" means the specific person whose legal
13 rights, duties or privileges are being determined in the
14 proceeding.

15
16 7. Regulation. "Regulation" means the whole or any part of
17 every regulation, standard, code, statement of policy or other
18 agency statement of general applicability, including the
19 amendment, suspension or repeal of any prior regulation, that is
20 or is intended to be judicially enforceable and implements,
21 interprets or makes specific the law administered by the agency,
22 or describes the procedures or practices of the agency. All
23 regulations adopted after July 1, 1989, shall, to the maximum
24 extent feasible, as determined by the affected agency, use plain
25 and clear English, which can be readily understood by the public.

26
27 A. "Regulation" does not include:

28
29 (1) Policies or memoranda concerning only the internal
30 management of an agency or the municipal government and
31 are not judicially enforceable;

32
33 (2) Decisions issued in adjudicatory proceedings; or

34
35 (3) Any form, instruction or explanatory statement of
36 policy which in itself is not judicially enforceable,
37 and which is intended solely as advice to assist
38 persons in determining, exercising or complying with
39 their legal rights, duties or privileges.

40
41 §2733. Inconsistent provisions

42
43 Except where expressly authorized by law, any ordinance
44 provision existing on or adopted after the effective date of this
45 section which is inconsistent with this chapter shall yield and
46 this chapter shall apply.

47
48 §2734. Matters pending not affected

49 This chapter does not apply to:

1 1. Adjudicatory proceedings. Adjudicatory proceedings
3 commenced by filing of an application, request for a hearing,
agency notice of a hearing or otherwise in accordance with law;

5 2. Licensing proceedings. Licensing proceedings commenced
7 by filing an application for a license, or renewal or reissuance
of a license, or by notice of agency proceedings affecting an
9 existing license, before July 1, 1989;

11 3. Judicial review. Judicial review of any action under
subsections 1 or 2; or

13 4. Collective bargaining. Municipal personnel regulations
15 negotiated as part of any collective bargaining agreement.

17 §2735. Regulation making

19 1. Notice; public hearing. Before adopting any regulation,
21 the agency shall give notice as provided in section 2736 and may
hold a public hearing, provided that a public hearing shall be
23 held if otherwise required by law, charter or ordinance or
requested by any 5 interested persons.

25 2. Requirements. Any public hearing shall comply with any
27 requirements imposed by law. Any public hearing shall be
conducted as follows.

29 A. In the case of a regulation authorized to be adopted by
31 more than one agency member, at least 1/3 of the agency
members must be present.

33 B. In the case of a regulation authorized to be adopted by
35 a single agency member, the agency member shall conduct the
hearing.

37 3. Statements and arguments filed. When a public hearing
39 is held, written statements and arguments concerning the proposed
regulation may be filed with the agency within 10 days after the
41 close of the public hearing, or within any longer time that the
agency directs.

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

47 5. Written statement adopted. At the time a regulation is
49 adopted, the agency shall adopt a written statement explaining
the factual and policy basis for the regulation. The agency shall
51 specifically address representative comments and state its
rationale for adopting any changes from the proposed regulation,
or failing to adopt suggested changes.

1 6. Effective date. No regulation, except emergency
2 regulations adopted under section 2737, may become effective
3 until at least 5 days after the regulation is filed with the
4 municipal clerk under section 2739; subsection 1, paragraph B.

5 7. Adoption of regulation. No regulation may become
6 effective unless:

7 A. The agency adopts it within 120 days of the final date
8 by which data, views or arguments may be submitted to the
9 agency for consideration in adopting the regulation; and

10 B. The adopted regulation is approved by an attorney
11 admitted to the practice of law in this State for the
12 municipality as to form and legality, as required by section
13 2739, within 150 days of the final date by which those
14 comments may be submitted.

15 The final date for comments may be extended if notice of doing so
16 is published before that final date, in the consolidated notice
17 referred to in section 2739.

18 8. Appropriate reference to underlying federal and state
19 laws and regulations. At the time a regulation is adopted, the
20 agency shall refer with particularity to any underlying federal
21 law or regulation or state law or rule which serves as the basis
22 of the regulation.

23 §2736. Notice

24 1. Notice of regulation-making without hearing. At least
25 20 days before adopting any regulation without hearing, the
26 agency shall deliver or mail written notice to:

27 A. Any person specified by charter or the ordinance
28 authorizing the regulation making;

29 B. Any person who has filed within the past year a written
30 request with the agency for notice of regulation making; and

31 C. Any trade, industry, professional, interest group or
32 regional publication that the agency considers effective in
33 reaching the persons affected.

34 Notification to subscribers under paragraph B shall be by mail or
35 otherwise in writing to the last address provided to the agency
36 by that person. Subscribers under paragraph B may request to
37 receive a copy of each proposed regulation with the written
38 notice. The agency shall provide the copy at the same time the
39 notice is sent.

1 Written notice shall also be given to the municipal clerk, by the
2 deadline established by the clerk, for publication in accordance
3 with subsection 6.

5 2. Notice of regulation-making hearing. When an agency
6 holds a public hearing before adopting a regulation, notice of
7 the hearing shall be given as described in subsections 1 and 6,
8 using the date of the hearing to calculate the time periods
9 involved.

11 3. Contents of notice. The notice shall:

13 A. Refer to the legal authority under which the adoption of
14 the regulation is proposed;

15 B. State the time and place of any scheduled public hearing
16 or state the manner in which a hearing may be requested;

17 C. State the manner and time within which data, views or
18 arguments may be submitted to the agency for consideration,
19 whether or not a hearing is held;

20 D. If possible, contain the express terms of the proposed
21 regulation or otherwise describe the substance of the
22 proposed regulation, stating the subjects and issues
23 involved and indicating where a copy of the proposed
24 regulation may be obtained; and

25 E. Refer to the substantive state or federal law or
26 municipal ordinance to be implemented by the regulations.

27 4. Copies of proposed regulations available upon request.
28 At least 20 days before a hearing on any proposed regulation and
29 at least 20 days before the adoption of any regulation without a
30 hearing, the agency shall make copies of the proposed regulation
31 available to persons upon request.

32 5. Fee schedule. The agency may establish a fee schedule
33 for notice and for proposed regulations under subsection 1,
34 paragraph B, imposing a cost reasonably related to the actual
35 expense entailed.

36 6. Publication. The municipal clerk shall:

37 A. Arrange for the weekly publication of a consolidated
38 notice of regulation making of all municipal agencies, which
39 shall also include a brief explanation to assist the public
40 in participating in the regulation-making process. Notice
41 of each regulation-making proceeding shall be published once
42 17 to 24 days before the public hearing on the proposed
43 regulation or at least 30 days before the last date on which
44 the regulation is to be adopted.

1 views and arguments may be submitted to the agency for
2 consideration if no public hearing is scheduled;

3 B. Designate certain newspapers, which together have
4 general circulation throughout the municipality, as papers
5 of record for the purpose of publishing notice under
6 paragraph A.

7 C. Designate one weekday as regulations day for publication
8 of notices on regulation making as set forth in this
9 subsection; and

10 D. Be reimbursed for the cost of publication of
11 regulation-making notices by the agencies proposing the
12 regulation making. The total costs of each consolidated
13 publication will be prorated by the municipal clerk among
14 all agencies submitting notice for a particular week.

15 **§2737. Emergency regulation making**

16 1. Emergency. If the agency finds that immediate adoption
17 of a regulation by procedures other than those set forth in
18 sections 2735 and 2736 is necessary to avoid an immediate threat
19 to public health, safety or general welfare, it may modify those
20 procedures to the minimum extent required to enable adoption of
21 regulations designed to mitigate or alleviate the threat found.
22 Emergency regulations are subject to section 2739.

23 2. Agency findings. Any emergency regulation shall
24 include, with specificity, the agency's findings with respect to
25 the existence of an emergency. These findings are subject to
26 judicial review under section 2741. No emergency may be found to
27 exist when the primary cause of the emergency is delay caused by
28 the agency involved.

29 3. Emergency period. An emergency regulation is effective
30 only for 90 days, or any lesser period of time specified in the
31 enabling legislation or in the emergency regulation. After the
32 emergency period expires, the regulation may not thereafter be
33 adopted except in the manner provided by section 2735.

34 **§2738. Petition for adoption or modification of regulations**

35 1. Petition. Any person may petition an agency for the
36 adoption or modification of any regulation.

37 2. Form designated. Each agency shall designate the form
38 for petitions under this section and the procedure for petition
39 submission, consideration and disposition.

40 3. Receipt of petition. Within 60 days after a petition is
41 received, the agency shall either notify the petitioner in

1 writing of its denial, stating the reasons for the denial, or
2 initiate appropriate regulation-making proceedings. Whenever a
3 petition to adopt or modify a regulation is submitted by 10% or
4 more of the total number of voters in the municipality who voted
5 in the last gubernatorial election, the agency shall initiate
6 appropriate regulation-making proceedings within 60 days after
7 receiving the petition. The petition must be verified and
8 certified in the same manner provided in Title 21-A, section 354,
9 subsection 7, before its presentation to the agency.

11 **§2739. Filing and publication**

13 **1. Requirements.** With respect to every regulation adopted,
14 the agency shall:

15 **A. Submit the regulation to an attorney admitted into the**
16 **practice of law in this State for the municipality for**
17 **approval as to form and legality.**

18 **(1) No person involved in the formulation or drafting**
19 **of the proposed regulation may conduct the legal review**
20 **required by this paragraph;**

21 **B. File a certified copy of the regulation and the**
22 **statement required by section 2735, subsection 6, with the**
23 **municipal clerk in a form prescribed by the Secretary of**
24 **State. This form must be susceptible to frequent and easy**
25 **revision;**

26 **C. Supply, without cost or at actual cost, copies of each**
27 **regulation to any person who has filed with the agency**
28 **within the past year a written request to be supplied with**
29 **all copies of the agency's regulations; and**

30 **D. Publish, pursuant to the procedures set forth in section**
31 **2736, subsection 6, a notice containing the following**
32 **information:**

33 **(1) A statement that the regulation has been adopted;**

34 **(2) The effective date of the regulation;**

35 **(3) A brief description of the substance of the**
36 **regulation; and**

37 **(4) The address where a copy may be obtained.**

38 **2. Form.** The agency shall print and compile and make
39 available to any person, at each of its offices, for inspection
40 at no charge and for copying with or without cost, as the agency
41 determines, and for distribution free or at actual cost, complete
42 copies of the regulation.

1 sets of regulations currently in effect and any of the items set
2 out in section 2732, subsection 8, paragraph A, subparagraph 3.

3 **3. Municipal clerk. The municipal clerk shall:**

4
5 **A. Maintain and make available at the clerk's office, for**
6 **inspection at no charge and for copying or purchase at**
7 **actual cost, current copies of complete regulations for all**
8 **agencies filed in accordance with subsection 1, paragraph B;**

9
10 **B. Compile, edit, index and arrange for publication and**
11 **distribution all current regulations of municipal agencies.**
12 **Compilations shall be supplemented or revised at least**
13 **annually; and**

14
15 **C. Supply, at actual cost, annually updated copies of**
16 **complete sets of regulations of an agency to any person who**
17 **has filed with the municipal clerk within the past year a**
18 **written request for such sets of regulations.**

19
20 **4. Record of vote. Each agency shall keep, at its**
21 **principal office, and make available for inspection to any**
22 **person, a record of the vote of each member of the agency taken**
23 **in regulation-making proceedings.**

24 **§2740. Compliance**

25
26 **1. Regulations; exception. Regulations adopted in a manner**
27 **other than that prescribed by section 2735, subsections 1, 2, 3,**
28 **4 and 7 and by sections 2736 and 2737 are void, provided that**
29 **insubstantial deviations from the requirements of section 2736**
30 **shall not invalidate the regulation subsequently adopted.**
31 **Regulations in effect July 1, 1989, become void on July 1, 1990,**
32 **unless originally adopted after notice published in a newspaper**
33 **of general circulation in some area of the State and opportunity**
34 **for hearing or unless adopted in accordance with this chapter.**

35
36 **2. Regulations not approved. Regulations not approved and**
37 **filed in the manner prescribed by section 2739, subsection 1,**
38 **paragraphs A and B, are void. Regulations in effect before July**
39 **1, 1989, become void on December 31, 1990, unless filed with the**
40 **municipal clerk in accordance with section 2739, subsection 1,**
41 **paragraph B.**

42
43 **3. Agency responsibility. This chapter does not relieve**
44 **any agency of the responsibility of complying with any ordinance**
45 **requiring that its regulations be filed with or approved by any**
46 **designated person before they become effective.**

47
48 **§2741. Judicial review of regulations**

1 1. Judicial review. Any person aggrieved by an agency
2 regulation or an agency's refusal or failure to adopt a
3 regulation where the adoption of a regulation is required by law
4 may obtain judicial review in accordance with the Maine Rules of
5 Civil Procedure, Rule 80B. Insofar as the court finds that a
6 regulation exceeds the regulation-making authority of the agency,
7 or is void under section 2740, subsection 1 or 2, it shall
8 declare the regulation invalid. In reviewing any other procedural
9 error alleged, the court may invalidate the regulation only if it
10 finds the error to be substantial and related to matters of such
11 central relevance to the regulation that there is a substantial
12 likelihood that the regulation would have been significantly
13 changed if the error had not occurred. If the court finds that
14 the regulation is not procedurally invalid and not in excess of
15 the agency's regulation-making authority, its substantive review
16 of that regulation shall be to determine whether the regulation
17 is arbitrary, capricious, an abuse of discretion or otherwise not
18 in accordance with law. The phrase "otherwise not in accordance
19 with law" applies only to the review authorized in the preceding
20 sentence and shall not be construed to limit or replace in any
21 way section 2733. In the event that the court finds that an
22 agency has failed to adopt a regulation as required by law, the
23 court may issue such orders as are necessary and appropriate to
24 remedy such failure.

25 2. Failure to seek judicial review. The failure to seek
26 judicial review of an agency regulation in the manner provided by
27 subsection 1 may not preclude judicial review of a regulation in
28 any civil or criminal proceeding.

STATEMENT OF FACT

31
32
33
34
35 This bill subjects regulations of municipalities, including
36 boards, bureaus, commissions, departments and offices of
37 municipal governments and regulations of quasi-municipal
38 corporations to an administrative procedure similar to that of
39 state agencies. According to this bill:

40
41 1. Municipalities and quasi-municipal corporations are
42 required to give at least a 20-day notice to the public with
43 respect to regulations proposed by the municipality for adoption;

44
45 2. Whenever municipalities and quasi-municipal corporations
46 decide to hold a public hearing on a proposed regulation, notice
47 of the hearing must be given at least 20 days before the date of
48 that hearing;

49
50
51 3. Following a public hearing held by a municipality or
quasi-municipal corporation on a proposed regulation, the public

1 has 10 days to file written statements and arguments concerning
the proposed regulation;

3

4. Emergency regulations may be adopted to avoid an
5 immediate threat to the public health, safety or welfare of the
residents of the municipality. Emergency regulations must be
7 filed and published as required for nonemergency regulations;

9

5. In order for a proposed regulation to become effective,
a municipal regulation or the regulation of a quasi-municipal
11 corporation must be adopted by the municipality or
quasi-municipal corporation within 120 days from the date that
13 comments may be submitted concerning the regulation;

15

6. An attorney selected by the municipality or
quasi-municipal corporation must approve the regulation in regard
17 to form and legality; and

19

7. The municipal clerk will be responsible for filing
municipal regulations and supplying copies of regulations to
21 persons who request copies.