

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1587

H.P. 1144

House of Representatives, May 9, 1989

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

Ed Pert

EDWIN H. PERT, Clerk

Presented by Representative CARROLL of Gray.
Cosponsored by Representative JOSEPH of Waterville.

STATE OF MAINE

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

**An Act to Establish Greater Communication in the Rule-making
Process and to Provide Better Standards for the Adoption of Rules.**

(EMERGENCY)



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

5 Whereas, it is necessary that this legislation be enacted as
an emergency measure in order that appointments may be made to
7 the Commission on Codification of Rules as soon as possible so
that the commission may undertake and complete its work in a
9 timely fashion; and

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

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

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

21 A. "Rule" means the whole or any part of every regulation,
23 standard, code, statement of policy, or other agency
statement of general applicability, including the amendment,
25 suspension or repeal of any prior rule, that is or is
intended to be judicially enforceable and implements,
27 interprets or makes specific the law administered by the
agency, or describes the procedures or practices of the
29 agency. ~~All rules promulgated after July 1, 1979, shall, to
the maximum extent feasible, as determined by the affected
31 agency, use plain and clear English, which can be readily
understood by the public.~~

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

35 §8051-A. Appointment of liaison

37 The commissioner or director of each state agency shall
39 designate a person to serve as a liaison between the agency and
the general public, the Secretary of State and the office of the
41 Attorney General with respect to rulemaking. The liaison shall
serve as a representative of the agency with respect to providing
43 information about agency rules. The liaison shall be responsible
for implementing the procedural provisions of this subchapter.

45 **Sec. 3. 5 MRSA §8052, sub-§5,** as amended by PL 1985, c. 680,
47 §1, is repealed and the following enacted in its place:

49 5. Written statement adopted. At the time of adoption of
any rule, the agency shall adopt a written statement explaining
51 the factual and policy basis for the rule. The agency shall
address the specific comments and concerns expressed about any

1 proposed rule and state its rationale for adopting any changes
2 from the proposed rule, failing to adopt the suggested changes or
3 drawing findings and recommendations that differ from those
4 expressed about the proposed rule.

5
6 A. If the same or similar comments or concerns about a
7 specific issue are expressed by different persons or
8 organizations, the agency may synthesize these comments and
9 concerns into a single comment that accurately reflects the
10 meaning and intent of these comments and concerns to be
11 addressed by the agency.

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

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

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

39
40 **Sec. 5. 5 MRSA §8053-A, as amended by PL 1987, c. 402, Pt. A,**
41 **§§60 and 61, is repealed and the following enacted in its place:**

42 **§8053-A. Notice to legislative committees**

43
44 1. Proposed rules. At the time of giving notice of
45 rulemaking under section 8053 or within 10 days following the
46 adoption of an emergency rule, the agency shall provide to the
47 Legislature, in accordance with subsection 3, a fact sheet
48 providing the information as described in section 8057-A,
49 subsection 1.

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

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

23 3. Submission of materials to the Legislature. When an
25 agency, pursuant to subsection 1 or 2, provides materials to the
27 Legislature, it shall provide them to the Executive Director of
29 the Legislative Council, who shall refer the materials to the
31 appropriate committee or committees of the Legislature for
33 review. The agency shall provide sufficient copies of the
35 materials for each member of the appropriate committee or
37 committees.

39 4. Adopted rules. When an agency adopts rules, it shall
41 provide a copy of the adopted rules, the statement required by
43 section 8052, subsection 5, and the checklist required by section
45 8056-A to the Secretary of State who shall compile the adopted
47 rules by agency. The Secretary of State shall provide copies of
49 official rules and the written statement defined in section 8052,
51 subsection 5, for each rule to the Law and Legislative Reference
Library.

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

§8056-A. Oversight

1 1. Monitoring. The Secretary of State shall monitor the
3 compliance of all agencies with this subchapter. The Secretary
5 of State shall establish and implement a checklist which shall be
7 completed for each rule which is proposed after January 1, 1990.
9 The purpose of the checklist is to provide an indication of the
11 agency's compliance with rule-making requirements. It shall
13 include the timing of filing and notices as well as other
15 requirements, such as the adequacy and clarity of explanatory and
17 fiscal information.

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

1 3. Report. The Secretary of State shall report to the
2 Governor and the joint standing committee of the Legislature
3 having jurisdiction over state and local government prior to
4 February 1st of each year with respect to agency compliance with
5 the provisions of sections 8052, 8053-A and 8060. The Secretary
6 of State shall specify in this report the areas in which
7 compliance needs improvement and the means by which improvement
8 can be achieved. The Secretary of State shall also specify the
9 agencies that have relatively low compliance rates.

11 A. If an agency is given a low or fair compliance rating
12 pursuant to this subsection, the Secretary of State shall
13 report any ensuing low or fair compliance rates with respect
14 to any rule proposed or adopted by that agency to the
15 appropriate joint standing committee or committees of the
16 Legislature until the agency is given a good compliance
17 rating.

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

21 §8057-A. Preparation and adoption of rules

23 In preparing and adopting rules, each agency shall strive to
24 the greatest possible extent to follow the procedure defined in
25 this section.

27 1. Preparation of rules. At the time that an agency is
28 preparing a rule, the agency shall consider the goals and
29 objectives for which the rule is being proposed, possible
30 alternatives to achieve the goals and objectives and the
31 estimated impact of the rule. The agency's estimation of the
32 impact of the rule shall be based on the information available to
33 the agency and any analyses conducted by the agency or at the
34 request of the agency. The agency shall establish a fact sheet
35 that provides the citation of the statutory authority of the
36 rule. In addition, the agency, to the best of its ability, shall
37 also include in the fact sheet the following:

39 A. The principal reasons for the rule;

41 B. A comprehensive but concise description of the rule that
42 accurately reflects the purpose and operation of the rule;

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

45 D. A description of the economic impact of the rule
46 including effects that cannot be quantified in monetary
47 terms;

49 E. A definition and examples of the major interest groups
50 and types of businesses that will be affected by the rule
51 and how they will be affected; and

1 F. A description of the benefits of the rule including
3 those that cannot be quantified.

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

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

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

19 §8060. Regulatory agenda

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

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

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

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

37 C. The purpose of the rule;

39 D. The contemplated schedule for adoption of the rule;

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

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

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

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

1
2 4. Availability. An agency which issues an agency
3 regulatory agenda shall provide copies to interested persons.

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

11 6. Application. Nothing in this section or section 8053-A
12 may be construed to prohibit agencies from adopting emergency
13 rules or rules that have not been listed or included in the
14 regulatory agenda pursuant to this section.

15 **§8061. Style**

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

25 **§8062. Performance standards**

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

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

41
42 Any group of 100 or more registered voters, who have a
43 substantial interest in a rule, or any person who may be
44 directly, substantially and adversely affected by the application
45 of a rule, may file an application for review with the executive
46 director. With respect to any application or petition for review
47 pursuant to this section, the petition or application shall be
48 verified and certified in the same manner provided in Title 21-A,
49 section 354, subsection 7. The applicant shall state with
50 specificity on a form prepared by the director, the following:

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Sec. 10. Commission on Codification of Rules.

1. There is established the Commission on Codification of Rules to consist of 12 members as follows:

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

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

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

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

E. The Attorney General's designee, who must be knowledgeable of the Maine Administrative Procedure Act, Title 5, chapter 375;

F. The State Law Librarian, ex officio; and

G. The Director of Legislative Oversight, ex officio.

2. The President of the Senate and the Speaker of the House of Representatives shall jointly appoint the chair from among the legislative members.

3. All members of the commission shall be appointed within the 90-day period following the adjournment of the First Regular Session of the 114th Legislature. The first meeting of the commission shall be held no later than October 1, 1989.

4. The commission shall investigate various alternative codifications of rules and the cost of each alternative. In undertaking this investigation the commission shall consider:

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

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

C. Capital equipment required;

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

3 E. The processes of codification to include contracting all
5 or some of the tasks of codification with the private
sector; and

7 F. The distribution of a code of rules to include prices to
9 be charged to public agencies.

11 5. The commission shall report its findings and its
recommendation for a code of rules to the Joint Standing
13 Committee on State and Local Government no later than March 15,
1990.

15 6. The legislative members shall be compensated at the
17 legislative per diem rate including expenses for meetings held
when the Legislature is not in session. All other members shall
19 receive expense reimbursement only.

21 7. The Legislative Council shall provide for the staffing
of the commission.

23 A. Prior to the first meeting of the commission, the staff
25 shall obtain necessary background information and materials
for the commission.

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

31 1989-90

33 **LEGISLATURE**

35 **Commission on Codification of Rules**

| | | |
|----|-------------------|---------|
| 37 | Personal Services | \$1,100 |
| | All Other | 3,800 |

39 Provides funds for the per diem, travel and
41 related expenses of the Commission on
Codification of Rules.

| | | |
|----|--------------------|---------|
| 43 | LEGISLATURE | |
| 45 | TOTAL | \$4,900 |

47 **Emergency clause.** In view of the emergency cited in the
49 preamble, this Act shall take effect when approved.

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STATEMENT OF FACT

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7 The purposes of this bill are to provide more pertinent and
9 comprehensive information relating to rules for Legislature use,
11 to help streamline the regulatory process and to provide more
13 notice to the public and the Legislature with respect to the
15 intended adoption of rules that are substantially different from
17 proposed rules.

19 Section 2 of the bill requires each department and agency to
21 designate a person to act as liaison on rule-making activities
23 with the public, Attorney General and Secretary of State.

25 Section 3 of the bill requires agencies to give the public
27 additional notice and opportunity for comment when an agency
29 intends to adopt a final rule that is substantially different
31 from the proposed rule.

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35 Section 4 of the bill requires agencies to consider the
37 impact of proposed rules on small businesses and permits agencies
39 to lessen the impact of the rules as they affect small businesses.

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43 Section 5 of the bill specifies what proposed and final
45 rule-making information must be provided to the Legislature.

47 Section 6 of the bill directs the Secretary of State to
49 provide technical assistance to agencies regarding the form of
51 rules and procedural requirements for adopting rules. This
53 section also requires the Secretary of State to monitor agency
55 compliance with procedural requirements of the Maine Revised
57 Statutes, the Maine Administrative Procedure Act, Title 5,
59 chapter 375, and to report annually to the Governor and the
61 Legislature.

63

65 Section 7 of the bill specifies what agencies must consider
67 in general when proposing and adopting rules.

69 Section 8 of the bill requires agencies to issue an annual
71 regulatory agenda of anticipated rule-making activities. It also
73 requires that rules be written in plain and clear English and
75 requires the use of performance standards where permitted by laws
77 requiring regulations.

79 Section 9 of the bill provides that citizen petitions for
81 rulemaking shall be verified in the same manner as referendum
83 petitions.

85 Section 10 of the bill creates a 12-member Commission on the
87 Codification of Rules.