

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1799

H.P. 1235

House of Representatives, May 6, 1991

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

A handwritten signature in cursive script that reads "Ed Pert".

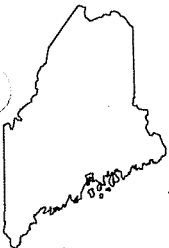
EDWIN H. PERT, Clerk

Presented by Representative CARROLL of Gray.
Cosponsored by Representative HOGLUND of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

**An Act to Clarify the Economic Impact Analysis in Administrative
Rule-making Procedures.**



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

2
3 **Sec. 1. 5 MRSA §8052, sub-§5,** as repealed and replaced by PL
4 1989, c. 574, §3, is amended to read:

6 **5. Written statement adopted.** At the time of adoption of
7 any rule, the agency shall adopt a written statement explaining
8 the factual and policy basis for the rule and setting forth the
9 final fiscal and economic impact analysis of the proposed rule.
10 The agency shall address the specific comments and concerns
11 expressed about any proposed rule and state its rationale for
12 adopting any changes from the proposed rule, failing to adopt the
13 suggested changes or drawing findings and recommendations that
14 differ from those expressed about the proposed rule. The agency
15 shall also address any comments and concerns regarding the fiscal
16 or economic impact of the proposed rule that were raised during
17 the public comment period and shall state its rationale for
18 accepting or rejecting such comments in formulating its final
19 fiscal and economic impact analysis.

20
21 A. If the same or similar comments or concerns about a
22 specific issue are expressed by different persons or
23 organizations, the agency may synthesize these comments and
24 concerns into a single comment that accurately reflects the
25 meaning and intent of these comments and concerns to be
26 addressed by the agency.

27
28 B. A rule may not be adopted unless the adopted rule is
29 consistent with the terms of the proposed rule, except to
30 the extent that the agency determines that it is necessary
31 to address concerns raised in comments about the proposed
32 rule, or specific findings are made supporting changes to
33 the proposed rule. The agency shall maintain a file for
34 each rule adopted that shall include, in addition to other
35 documents required by this Act, testimony, comments and
36 information relevant to the rule and considered by the
37 agency in connection with the formulation, proposal or
38 adoption of a rule including any comments or concerns
39 regarding the rule's fiscal or economic impact. If an
40 agency determines that a rule which it intends to adopt will
41 be substantially different from the proposed rule, it shall
42 request comments from the public concerning the changes from
43 the proposed rule. The agency may not adopt the rule for a
44 period of 30 days from the date comments are requested
45 pursuant to this paragraph. Notice of the request for
46 comments shall must be published by the Secretary of State
47 in the same manner as notice for proposed or adopted rules.

48
49 **Sec. 2. 5 MRSA §8053, sub-§2,** as repealed and replaced by PL
50 1979, c. 425, §5, is amended to read:

2 **2. Notice of rulemaking hearing.** When an agency holds a
3 public hearing prior to adoption of a rule, notice of the hearing
4 shall must be given to the persons, groups and publications
5 described in subsection 1 and in the manner described in
6 subsections 1 and 5, using the date of the hearing to calculate
the time periods involved;

8 **Sec. 3. 5 MRSA §8053, sub-§3,** as amended by PL 1985, c. 77,
9 §2, is further amended to read:

10 **3. Contents of notice.** The notice shall required by
11 subsections 1 and 2 must:

12 A. Refer to the statutory authority under which the
13 adoption of the rule is proposed;

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

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

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

23 E. Refer to the substantive state or federal law to be
24 implemented by the rules; and

25 F. Solicit comments as to the fiscal and economic impact of
26 the proposed rule.

27 **Sec. 4. 5 MRSA §8057-A, sub-§§1 to 4,** as enacted by PL 1989, c.
28 574, §7, are amended to read:

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

41 A. The principal reasons for the rule;

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

4 C. An estimate of the fiscal and economic impact of the
rule; and

6
8 D. An analysis of the rule, including a description of how
the agency considers whether the rule would impose an
economic burden on small business as described in section
10 8052, subsection 5-A.

12 **2. Additional information for rules that have an estimated**
fiscal or economic impact greater than \$1,000,000. For existing
14 rules having an estimated fiscal or economic impact greater than
\$1,000,000 and for proposed rules or proposed modifications that
16 would cause existing rules to have an estimated fiscal or
economic impact greater than \$1,000,000, the fact sheet shall
18 must also include the following:

20 A. A description of the economic impact of the rule
including effects that cannot be quantified in monetary
22 terms;

24 B. A description and examples of individuals, major
interest groups and types of businesses that will be
26 affected by the rule and how they will be affected; and

28 C. A description of the benefits of the rule including
those that cannot be quantified.

30
3. Public comment period. During the public comment period
32 and prior to adoption of any rule, the agency shall strive to
obtain and evaluate relevant information from the public and
34 other information reasonably available to the agency with respect
to relevant provisions in subsection 1, including information and
36 comments on the fiscal and economic impact of the rule.

38 **4. Adoption of rules.** At the time of adoption of any rule,
the agency shall file with the Secretary of State the information
40 developed by the agency pursuant to subsections 1 and 2,
including a final fiscal and economic impact analysis, together
42 with a copy of the written statement adopted by the agency
pursuant to section 8052, subsection 5.

STATEMENT OF FACT

46
48 The bill strengthens the economic impact analysis portion of
the rule-making provisions of the Maine Administrative Procedure
50 Act by requiring agencies to solicit and respond to public
comment on the economic and fiscal impact of proposed rules. It

2 also clarifies that the economic as well as fiscal impact of proposed rules must be analyzed.