

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1992

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Legislative Document

No. 2350

H.P. 1674

House of Representatives, February 18, 1992

Reported by Representative MELENDY for the Commission to Study State Permitting and Reporting Requirements pursuant to Public Law 1991, chapter 606.

Reference to the Joint Standing Committee on State and Local Government suggested and printing ordered under Joint Rule 18.

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

EDWIN H. PERT, Clerk

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STATE OF MAINE

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

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**An Act Concerning Economic Impact Analysis in Agency Rulemaking.**

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

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4       **Sec. 1. 5 MRSA §8052, sub-§5**, as repealed and replaced by PL 1989, c. 574, §3, is amended to read:

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

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

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

46       **Sec. 2. 5 MRSA §8052, sub-§5-A**, as enacted by PL 1989, c. 574,  
48 §4, is amended to read:

50       **5-A. Impact on small business.** In adopting rules, the  
52 agencies shall seek to reduce any economic burdens through  
flexible or simplified reporting requirements and may shall seek

2 to reduce burdens through flexible or simplified timetables that  
3 take into account the resources available to the affected small  
4 businesses. The agency may shall consider clarification,  
5 consolidation, or simplification of or difference in compliance  
6 or reporting requirements, excepting small businesses from  
7 certain types of rules and the use of performance rather than  
8 design standards. The agency shall determine the economic impact  
9 of the rule on small businesses and every 10 years shall review  
10 each rule to determine the continuing need for its existence and  
11 how that rule affects the cumulative economic impact of all rules  
12 on small businesses at that time. For the purposes of this  
13 subsection, "small business" means businesses that have 20 or  
14 fewer employees and gross annual sales not exceeding \$2,500,000.

15 **Sec. 3. 5 MRSA §8057-A, sub-§§1 and 2, as enacted by PL 1989,**  
16 **c. 574, §7, are amended to read:**

17 **1. Preparation of rules.** At the time that an agency is  
18 preparing a rule, the agency shall consider the goals and  
19 objectives for which the rule is being proposed, possible  
20 alternatives to achieve the goals and objectives and the  
21 estimated impact of the rule as described in this subsection;  
22 subsection 2; and section 8052, subsection 5-A. The agency's  
23 estimation of the impact of the rule shall must be based on the  
24 information available to the agency and any analyses conducted by  
25 the agency or at the request of the agency. The agency shall  
26 establish a fact sheet that provides the citation of the  
27 statutory authority of the rule. In addition, the agency, to the  
28 best of its ability, shall also include in the fact sheet the  
29 following:  
30

31 A. The principal reasons for the rule;

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

34 C. An estimate of the fiscal impact of the rule; and

35 D. An analysis of the rule, including a description of how  
36 the agency considers whether the rule would impose an  
37 economic burden on small business as described in section  
38 8052, subsection 5-A.

39 **2. Additional information for rules.** For existing rules  
40 having an estimated fiscal or economic impact greater than  
41 \$1,000,000 or that would cause a major increase in costs or  
42 prices or significantly adversely affect competition, employment,  
43 investment, productivity or innovation, the fact sheet shall must  
44 also include the following:  
45

2 A. A description of the ~~economic-impact~~ potential costs of  
the rule including effects that ~~cannot~~ can not be quantified  
in monetary terms;

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

8 C. A description of the benefits of the rule including  
10 those that ~~cannot~~ can not be quantified; and

12 D. A determination of the net benefits of the rule.

14 **Sec. 4. 5 MRSA §8065 is enacted to read:**

16 **§8065. Negotiated rulemaking**

18 If the head of the agency determines that the use of a  
20 committee to negotiate rulemaking is in the public interest, an  
agency may establish a committee to negotiate and develop a  
22 proposed rule. The committee must consist of persons  
significantly affected by the rule and persons representing the  
proposing agency.

26 **STATEMENT OF FACT**

28 This bill represents a majority recommendation of the  
30 Commission to Study State Permitting and Reporting Requirements.  
It is one of 4 bills and one resolution being submitted by this  
32 commission.

34 Current law requires a benefit and cost analysis of existing  
rules with a fiscal impact of over \$1,000,000. This bill  
36 requires such an analysis of all rules having a fiscal or  
economic impact over \$1,000,000 or that would cause a major  
38 increase in costs or adversely affect competition, employment or  
investment.

40 Current law requires that during rule preparation the  
42 preparing agency estimate the impact of the rule. This bill uses  
the word "impact" to mean fiscal impact in the case of all rules,  
44 economic impact in the case of small business and benefit and  
cost analysis in the case of rules with a major fiscal or  
46 economic impact.

48 Current law requires that an agency seek to reduce the  
burden of a rule on small business through simplified reporting  
50 and allows the agency to reduce that burden through simplified  
timetables and consideration of simplified compliance  
52 requirements. This bill requires that the agency reduce the

2 burden by the use of simplified timetables and by the  
3 consideration of simplified compliance requirements and requires  
4 consideration of different compliance requirements, excepting  
5 small business from certain rules and the use of performance  
6 standards. It requires that an agency determine the economic  
7 impact of a proposed rule on small business and review every 10  
8 years each existing rule as it affects small business to  
9 determine its continuing need and its contribution to the total  
10 economic impact of regulation on small business.

11 This bill allows an agency to establish a committee to  
12 negotiate the making of a rule.