

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)

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46

STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 777, L.D. 1050, Bill, "An Act to Repeal the Laws Allowing State Agencies to Adopt Rules Having the Force of Law"

Amend the bill by striking out the title and substituting the following:

'An Act to Enhance the Authority of the Legislature to Review Rules'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 5 MRSA §8052, sub-§6, as amended by PL 1981, c. 524, §5, is further amended to read:

6. Effective date. No rule, except emergency rules adopted under section 8054, may become effective until at least 5 30 days after filing with the Secretary of State under section 8056, subsection 1, paragraph B.

Sec. 2. 5 MRSA §8053-A, sub-§3, as enacted by PL 1989, c. 574, §5, is amended to read:

3. Submission of materials to the Legislature. When an agency, pursuant to subsection 1 or 2, provides materials to the Legislature, it shall provide them to the ~~Executive-Director-of the-Legislative-Council~~ Secretary of Senate and the Clerk of the House of Representatives, who shall jointly refer the materials to the appropriate committee or committees of the Legislature for review. The agency shall provide sufficient copies of the materials for each member of the appropriate committee or committees.

Sec. 3. 5 MRSA §11117 is enacted to read:

§11117. Legislative review of rules by committee

The Legislature may review proposed and adopted agency rules, except emergency rules, as provided in this section. The review authorized in this section must be carried out by the joint standing committee of the Legislature having jurisdiction over the subject matter of the rule, and the term "committee" as used in this section means that committee. The Legislature shall adopt rules governing committee procedures necessary to carry out the responsibilities of this section. Nothing in this section precludes a committee from initiating review of a rule on its own initiative. Failure of a committee to review a rule or to object to a rule is not an implied legislative authorization of the validity of the rule.

1. Review of proposed rules. In addition to the notice of a proposed rule provided to a committee under section 8053-A, subsections 1 and 3, an agency shall provide 15 copies of the proposed rule to the Secretary of the Senate and the Clerk of the House of Representatives. The secretary and clerk acting jointly shall immediately distribute copies of the rule to members of the committee. An agency may submit proposed rules to a committee for review under this subsection prior to the date provided in section 8053, subsection 1.

A. If, within 7 working days after copies of a proposed rule are distributed to the committee, 1/3 of the members of the committee notify the Secretary of the Senate or the Clerk of the House of Representatives that the rule should be reviewed, the secretary and clerk shall immediately notify the chairs of the committee that a rule review will take place. The committee may meet as necessary to conduct the review. The chairs shall send written notice to the adopting agency that the rule is under review and shall schedule a public hearing on that rule. The committee has 30 days from the date on which 1/3 of the committee members notify the secretary and clerk that a rule should be reviewed to complete its review and issue recommendations on the rule.

An agency may suspend without prejudice rule-making procedures on a rule under review by the committee.

B. The hearing on a proposed agency rule must be advertised and scheduled in the same manner as public hearings on legislative documents. The hearing must be at least 5 days but not more than 14 days after publication of notice.

At hearing the committee may receive written or oral testimony or data on the rule. The committee may require a

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 777, L.D. 1050

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50
52

representative of the agency whose rule is under review to appear and answer relevant questions.

C. If the committee chooses to review a proposed rule, it shall use the following criteria and a committee decision to object to a rule must be based on a finding that one or more of the following criteria exists:

- (1) Absence of statutory authority;
- (2) Lack of compliance with legislative intent;
- (3) Conflict with state law;
- (4) Changed circumstances after enactment of the law authorizing the rule that negate the need for the rule;
- (5) Abuse of discretion by the agency in proposing the rule; or
- (6) Fees established by the rule are unreasonable or unrelated to the costs of administration.

D. The committee must reach a decision on a proposed rule under review within the time allotted for review. If no decision is reached in that time, the committee may not take further action on the proposed rule.

The committee decision on a rule under review must be to accept the rule or to object to the rule. A majority vote of the full committee is necessary to object. If the committee objects to a rule, it is authorized on its own initiative to introduce legislation in the current regular session of the Legislature or in the next regular session if the Legislature is not in session at the time of the objection. Legislation introduced by the committee may overrule the rule, amend the rule or clarify the rule-making authority of the agency that proposed the rule.

If an agency modifies or withdraws a rule as a result of a committee objection, the agency shall notify the Secretary of State of the modification or withdrawal and arrange for one weekly publication of notice of that change through the Secretary of State. The agency shall provide notice of the change as provided in section 8053, subsection 1, paragraphs A, B and C. The agency need not repeat other steps in the rule-making process to continue the rule-making process with a proposed rule that has been modified as a result of committee review.

2. Review of adopted rules. At the same time as an agency files an adopted rule and basis statement with the Secretary of

COMMITTEE AMENDMENT

H.W.S.

COMMITTEE AMENDMENT "A" to H.P. 777, L.D. 1050

2 State under section 8056, subsection 1, paragraph B, the agency
3 shall also file 15 copies of the rule and statement with the
4 Secretary of the Senate and the Clerk of the House of
5 Representatives. The secretary and clerk jointly shall
6 immediately distribute copies of the rule and statement to
7 members of the committee.

8 A. If, within 7 working days after copies of a final rule
9 are distributed to the committee, 1/3 of the members of the
10 committee notify the Secretary of the Senate and the Clerk
11 of the House of Representatives that the rule should be
12 reviewed, the secretary and clerk shall immediately notify
13 the chairs of the committee that a rule review will take
14 place. The committee may meet as necessary to conduct the
15 review. The chairs shall send written notice to the
16 Secretary of State and the adopting agency that the rule is
17 under review and shall schedule a public hearing on the
18 rule. The secretary shall file the notice of review in the
19 central repository of rules with the copy of the rule under
20 review. The committee has 30 days from the date the agency
21 files copies of the rule with the secretary and the clerk to
22 complete its review and issue recommendations on the rule.

23 An agency may delay, without prejudice, the effective date
24 of a rule under review by the committee. Review of a rule
25 by a committee at the proposal stage does not preclude
26 review of that rule following adoption. If a committee
27 reviews a rule a 2nd time, the committee shall include in
28 its notice of review to the agency a statement explaining
29 the reason for reviewing the rule again.

30 B. The hearing on a final agency rule must be advertised
31 and scheduled in the same manner as public hearings on
32 legislative documents. The hearing must be at least 5 days
33 but not more than 14 days after publication of notice.

34 At hearing the committee may receive written or oral
35 testimony or data on the rule. The committee may require a
36 representative of the agency whose rule is under review to
37 appear and answer relevant questions.

38 C. If the committee chooses to review a rule, it shall use
39 the same criteria and procedure as specified in subsection
40 1, paragraph C for proposed rules.

41 D. The committee must reach a decision on a final rule
42 under review within the time frame allotted for review. If
43 no decision is reached in that time, the committee may not
44 take action on the rule except as provided in subsection 3.

2 The committee decision on a rule under review must be to
4 accept the rule or to object to the rule. A majority vote
6 of the full committee is necessary to object. If the
8 committee objects to a rule, it is authorized on its own
10 initiative to introduce legislation in the current regular
12 session of the Legislature or in the next regular session if
14 the Legislature is not in session at the time of the
16 objection. Legislation introduced by the committee may be
18 to overrule the rule, amend the rule or to clarify the
20 rule-making authority of the agency that adopted the rule.

12 If an agency modifies or withdraws a rule as a result of a
14 committee objection, the agency shall notify the Secretary
16 of State of the modification or withdrawal and arrange for
18 one weekly publication of notice of that change through the
20 Secretary of State. The agency shall provide notice of the
22 change as provided in section 8053, subsection 1, paragraphs
24 A, B and C. The agency need not repeat the rule-making
26 process to modify or withdraw a rule as a result of a
28 committee review.

22 3. Review of rule currently in effect. A committee may, on
24 a vote of at least 1/3 of the members of the full committee,
26 review a rule currently being implemented by an agency using the
28 procedures provided for review of final rules in subsection 2 as
30 modified in this subsection. A committee may not review a rule
32 previously reviewed under subsection 1 or 2 until at least 6
34 months after the rule is filed with the Secretary of State under
36 section 8056, subsection 1, paragraph B. If a majority of the
38 members of the full committee find legislation necessary to
40 modify a rule or clarify an agency's rule-making authority, the
42 committee is authorized to introduce legislation as provided in
44 subsection 1, paragraph D.

36 A. Review of a current rule begins upon a vote of at least
38 1/3 of the members of the full committee. If a committee
40 votes to review a rule, the chairs of the committee shall
42 notify the Secretary of the Senate and the Clerk of the
44 House of Representatives who shall inform the agency that
46 the rule will be reviewed. Upon receipt of that information
48 an agency shall immediately submit 15 copies of rule to the
50 secretary and the clerk for distribution to the committee.
The committee has 30 days from the date copies of the rules
are received by the secretary and clerk to complete its
review.

48 4. Committee report. The committee shall issue a written
50 report on every rule that it chooses to review. The report must
be issued within 14 days of the committee decision and be
submitted to the Legislative Council, the Governor, the Secretary
of State and the agency that proposed the rule.

2

FISCAL NOTE

4

6

8

10

12

14

STATEMENT OF FACT

16

18

20

22

24

26

28

This bill authorizes legislative committees to hold meetings to review state agency rules, to hold public hearings to receive data on the rules and to propose legislation to override or clarify those rules. Each meeting held during an interim between sessions will result in costs to the Legislature of approximately \$1,400 for the per diem and expense costs of legislators. The total amount of these costs and the cost to advertise and hold public hearings, and the resulting General Fund appropriations that could be required, can not be determined at this time.'

This amendment replaces the bill and establishes a procedure for joint standing committees of the Legislature to exercise review authority over rules proposed and adopted by administrative agencies. At the time a rule is proposed or an adopted rule is filed with the Secretary of State, the committee of jurisdiction may choose to review the rule on the approval of 1/3 of the committee members. Specific criteria and a schedule are established for the review, and a public hearing must be held. After reviewing the rule the committee is authorized to submit legislation to override or clarify the rule upon the vote of a majority of the committee. A similar process is established to review rules currently in effect.

Reported by the Majority of the Committee on State and Local
Government

Reproduced and distributed under the direction of the Clerk of the
House

6/2/93

(Filing No. H-557)