

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1050

H.P. 777

House of Representatives, March 29, 1993

**An Act to Repeal the Laws Allowing State Agencies to Adopt Rules
Having the Force of Law.**

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

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative GRAY of Sedgwick.
Cosponsored by Representatives: CAMPBELL of Holden, JOSEPH of Waterville, Senator:
BERUBE of Androscoggin.

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

4 Sec. 1. 5 MRSA c. 375, sub-c. II, as amended, is repealed.

6 Sec. 2. 5 MRSA c. 375, sub-c. II-A is enacted to read:

8 SUBCHAPTER II-A

10 AGENCY ACTIVITIES

12 §8081. Rules prohibited

14 A state agency may not adopt judicially enforceable
16 standards, criteria or requirements that have the force and
18 effect of law or further interpret or make specific the law
20 administered by the state agency. Only the Legislature may
22 undertake these actions.

24 §8082. Allowable activities

26 State agencies may adopt the following:

28 1. Internal management. Policies or memoranda concerning
30 only the internal management of an agency or the State Government
32 and not judicially enforceable;

34 2. Advisory rulings. Advisory rulings issued under
36 subchapter III;

38 3. Adjudicatory decisions. Decisions issued in
40 adjudicatory proceedings; or

42 4. Policies. A form, instruction or explanatory statement
44 of policy that in itself is not judicially enforceable and that
46 is intended solely as advice to assist persons in determining,
48 exercising or complying with their legal rights, duties or
privileges.

§8083. Judicial review

1. Judicial review. Judicial review of agency activities
under section 8082 to determine whether they violate the
provisions of section 8081 may be had by any person who is
aggrieved in an action for declaratory judgment in the Superior
Court conducted pursuant to Title 14, chapter 707, which applies
to those actions when not inconsistent with this section. If the
court finds that the agency's activities violate section 8081,
the court shall declare the rule or action invalid.

2 2. Failure to seek judicial review. Failure to seek
3 judicial review of an agency activity under section 8082 in the
4 manner provided by subsection 1 does not preclude judicial review
5 of that activity in any civil or criminal proceeding.

6 **Sec. 3. Transition.** All rules adopted by state agencies are
7 void after July 1, 1994. The Legislature shall review and may
8 subsequently amend and adopt all rules currently adopted by state
9 agencies before the adjournment of the Second Regular Session of
10 the 116th Legislature.

11 **Sec. 4. Preparation of conforming legislation.** The Office of the
12 Revisor of Statutes and the Office of Policy and Legal Analysis
13 shall identify in the Maine Revised Statutes all references to
14 state agencies adopting substantive criteria, standards or
15 requirements that are judicially enforceable or that have the
16 force of law and shall prepare a bill for review by the Joint
17 Standing Committee on State and Local Government amending the
18 statutes to remove those provisions. The bill must be submitted
19 to the committee by January 1, 1994 and the committee may
20 introduce the bill or an amended version of it in the Second
21 Regular Session of the 116th Legislature.
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STATEMENT OF FACT

27 This bill repeals that portion of the Maine Administrative
28 Procedure Act that allows state agencies to adopt rules. In its
29 place is enacted a prohibition on state agencies adopting
30 judicially enforceable standards, criteria or requirements or
31 further interpreting the law administered by the agency.
32

33 State agencies are allowed to adopt internal operating
34 policies and guidelines, issue advisory rulings and make
35 adjudicatory decisions. A violation of the prohibition is
36 judicially reviewable.
37

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39 Rules currently adopted by state agencies are declared void
40 on July 1, 1994. The Legislature shall review these rules and
41 may adopt and amend them.
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