

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)

RDR

L.D. 1123

DATE: 6/22/95

(Filing No. H- 584)

MAJORITY
STATE AND LOCAL GOVERNMENT

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

STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 806, L.D. 1123, Bill, "An
Act to Ensure That Rulemaking by Agencies Does Not Exceed the
Intent of Authorizing Legislation"

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-§1, as amended by PL 1977, c. 694,
§34-A, is further amended to read:

1. **Notice; public hearing.** Prior to the adoption of any
rule, the agency shall give notice as provided in section 8053
and may hold a public hearing, provided that a public hearing
~~shall be~~ is held if otherwise required by statute or requested by
any 5 interested persons.

A public meeting or other public forum held by an agency for any
purpose that includes receiving public comments on a proposed
agency rule is a public hearing and is subject to all the
provisions of this subchapter regarding public hearings. This
paragraph does not require compliance with this subchapter when
an agency holds an informal meeting for the purpose of gathering
public input prior to developing or deciding whether to proceed
with development of a proposed rule.

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

SUBCHAPTER II-A

RULEMAKING PROCEDURES GOVERNING RULES
AUTHORIZED AND ADOPTED AFTER JANUARY 1, 1996

COMMITTEE AMENDMENT

R. 2

§8071. Legislative review of certain agency rules

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

Except as otherwise provided in this subchapter, rules adopted pursuant to rule-making authorization delegated to an agency after January 1, 1996 are subject to the procedures of this subchapter and subchapter II.

1. Legislative action. All new rules authorized to be adopted by delegation of legislative authority that are enacted after January 1, 1996, including new rules authorized by amendment of provisions of laws in effect on that date, must be assigned by the Legislature to one of 2 categories and subject to the appropriate level of rule-making procedures as provided in this subchapter. The Legislature shall assign the category and level of review to all rules at the time it enacts the authorizing legislation. The Legislature may assign different categories and levels of review to different types of rules authorized by the same legislation.

2. Categories of rules. There are 2 categories of rules authorized for adoption after January 1, 1996.

A. Routine technical rules are procedural rules that establish standards of practice or procedure for the conduct of business with or before an agency and any other rules that are not major substantive rules as defined in paragraph B. Routine technical rules include, but are not limited to, forms prescribed by an agency; they do not include fees established by an agency except fees established or amended by agency rule that are below a cap or within a range established by statute.

B. Major substantive rules are rules that, in the judgment of the Legislature:

(1) Require the exercise of significant agency discretion or interpretation in drafting; or

(2) Because of their subject matter or anticipated impact, are reasonably expected to result in a significant increase in the cost of doing business, a significant reduction in property values, the loss or significant reduction of government benefits or services, the imposition of state mandates on units of local government as defined in the Constitution of Maine, Article IX, Section 21, or other serious burdens on the public or units of local government.

3. Levels of rule-making process. In order to provide for maximum agency flexibility in the adoption of rules while

retaining appropriate legislative oversight over certain rules that are expected to be controversial or to have a major impact on the regulated community, each agency rule authorized and adopted after January 1, 1996 is subject to one of 2 levels of rule-making requirements.

A. Routine technical rules are subject to the rule-making requirements of subchapter II only.

B. Major substantive rules are subject to the requirements of section 8072. After January 1, 1996, any grant of general or specific rule-making authority to adopt major substantive rules is considered to be permission only to provisionally adopt those rules subject to legislative review. Final adoption may occur only after legislative review of provisionally adopted rules as provided in section 8072.

The establishment or amendment of an agency fee by rulemaking is a major substantive rule, except for the establishment or amendment of a fee that falls under a cap or within a range set in statute, which is a routine technical rule.

§8072. Legislative review of major substantive rules

As provided in section 8071, major substantive rules are subject to an increased level of rule-making requirements. The rule-making requirements of subchapter II for routine technical rules apply to the adoption of major substantive rules, except that the 120-day period for adoption and the 150-day period for approval as to form and legality under section 8052, subsection 7, paragraphs A and B apply to provisional adoption of major substantive rules, not final adoption. In addition to the other rule-making requirements, every major substantive rule is also subject to legislative review as provided in this section.

1. Preliminary adoption of major substantive rules. An agency proposing a major substantive rule other than an emergency rule, after filing the notice of proposed rulemaking required by section 8052, shall proceed with rule-making procedures to the point of, but not including, final adoption. At that point, known in this section as "provisional adoption," the agency shall submit the rule to the Legislature for review and authorization for final adoption as provided in this section. The rule has legal effect only after review by the Legislature followed by final adoption by the agency.

R. O. S.

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

2. Submission of materials. At the time an agency provisionally adopts a rule, the agency shall submit to the Executive Director of the Legislative Council 20 copies of:

A. The full text of the rule provisionally adopted by the agency with new language underlined and with language to be deleted from any existing rule stricken through but clearly legible;

B. A concise summary of the content of the rule and a description and a copy of any existing rule the agency proposes to amend or repeal;

C. A statement of the circumstances that require the rule;

D. A statement of the economic impact of the rule on the State and its residents; and

E. Any other information required by law.

3. Assignment to committee of jurisdiction. Upon receipt of the required copies of the provisionally adopted rule and related information, the Executive Director of the Legislative Council shall determine the joint standing committee of the Legislature that has jurisdiction over the subject matter of the proposed rule and shall send the information to each member of that committee. Each rule submitted for legislative review must be reviewed by the appropriate joint standing committee at a meeting called for that purpose in accordance with legislative rules. A committee may review more than one rule and the rules of more than one agency at a meeting. The committee shall notify the affected agency of the meeting on its proposed rules.

4. Committee review. The committee shall review each provisionally adopted rule and, in its discretion, may hold public hearings on that rule. A public hearing under this subsection must be advertised in the same manner as required by legislative rules then in effect for advertisement of public hearings on proposed legislation. The committee's review must include, but is not limited to, a determination of:

A. Whether the agency has exceeded the scope of its statutory authority in approving the provisionally adopted rule;

B. Whether the provisionally adopted rule is in conformity with the legislative intent of the statute the rule is intended to implement, extend, apply, interpret or make specific;

R. 112

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

C. Whether the provisionally adopted rule conflicts with any other provision of law or with any other rule adopted by the same or a different agency;

D. Whether the provisionally adopted rule is necessary to fully accomplish the objectives of the statute under which the rule was proposed;

E. Whether the provisionally adopted rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

F. Whether the provisionally adopted rule could be made less complex or more readily understandable for the general public; and

G. Whether the provisionally adopted rule was proposed in compliance with the requirements of this chapter and with requirements imposed by any other provision of law.

5. Committee recommendation. After reviewing the rule, the committee shall recommend:

A. That the Legislature authorize the final adoption of the rule;

B. That the Legislature authorize the final adoption of a specified part of the rule;

C. That the Legislature authorize the final adoption of the rule with certain specified amendments; or

D. That the final adoption of the rule be disapproved by the Legislature.

The committee shall notify the agency proposing the rule of its recommendation. When the committee makes a recommendation under paragraph B, C or D, the notice must contain a statement of the reasons for that recommendation.

6. Draft legislation. When the committee recommends that a rule be authorized in whole or in part by the Legislature, the committee shall instruct its nonpartisan staff to draft a bill authorizing the adoption of all or part of the rule and incorporating any amendments the committee desires.

7. Consideration by the Legislature. No later than 30 days before statutory adjournment of the Legislature as provided in Title 3, section 2, each joint standing committee of the Legislature shall submit to the Secretary of the Senate and the

R. O. S.

COMMITTEE AMENDMENT "A" to H.P. 806, L.D. 1123

2 Clerk of the House of Representatives the committee's report on
3 agency rules the committee has reviewed as provided in this
4 section. The report must include a copy of the rule or rules
5 reviewed, the committee's recommendation concerning final
6 adoption of the rule or rules, a statement of the reasons for a
7 recommendation to withdraw or modify the rule or rules and draft
8 legislation for introduction in that session that is necessary to
9 implement the committee's recommendation. A committee may
10 decline to include in its report recommendations covering any
11 rules submitted to it later than 45 days before statutory
12 adjournment. If, before adjournment of the session at which a
13 rule is reviewed, the Legislature fails to act on all or part of
14 any rule submitted to it for review in accordance with this
15 section, an agency may proceed with final adoption and
16 implementation of the rule or part of the rule that was not acted
17 on.

18 8. Final adoption; effective date. Unless otherwise
19 provided by law, final adoption of a rule by an agency must occur
20 within 60 days of the effective date of the legislation approving
21 that rule or of the adjournment of the session at which that rule
22 is reviewed if no legislation is enacted. Finally adopted rules
23 must be filed with the Secretary of State as provided in section
24 8056, subsection 1, paragraph B and notice must be published as
25 provided in section 8056, subsection 1, paragraph D. An agency
26 rule authorized by the Legislature becomes effective 30 days
27 after filing with the Secretary of State or at a later date
28 specified by the agency.

30 9. Consideration at special session. If appropriate, the
31 committee recommendation regarding an agency rule or rules may be
32 submitted to and considered by a special session of the
33 Legislature.

34 **§8073. Emergency major substantive rules**

35 Major substantive rules are subject to the emergency
36 rule-making procedures required under subchapter II, except that
37 a major substantive rule adopted on an emergency basis after the
38 deadline for submission to the Legislature for review under
39 section 8072 may be effective for up to 12 months or until the
40 Legislature has completed review as provided in that section.
41 After the expiration of the emergency period, an emergency rule
42 may not be adopted except in the manner provided by section 8072.

43 **§8074. Federally mandated rules**

44 Major substantive rules that must be adopted to comply with
45 federal law or regulations or to qualify for federal funds and
46 over the adoption of which the agency exercises no option or
47 over the adoption of which the agency exercises no option or
48 over the adoption of which the agency exercises no option or
49 over the adoption of which the agency exercises no option or
50 over the adoption of which the agency exercises no option or

2 of 2

discretion are not subject to the legislative review requirement of this subchapter unless they impose requirements or conditions that exceed the federal requirements. An agency must file notice of the adoption of major substantive rules that are required by federal law and that do not exceed federal requirements with the Legislature in the same manner as it files notice of proposed rules under section 8053-A.

Sec. 3. Administrative rules inventory; report. Upon completion of the inventory of agency administrative rules provided in Executive Order 6 FY 94/95, the Governor shall submit a report on the results of that inventory, including recommended actions to ensure that rules are updated periodically and that rules comply with legislative intent, and on efforts to codify rules in a standard format and to provide electronic access to those rules. The Governor shall submit the report to the Joint Standing Committee on State and Local Government by January 31, 1996.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

The new rule-making provisions of the bill will result in increased General Fund costs to the Legislature from legislator per diem, expenses and public hearing costs if legislative committees are required to meet during the interim between sessions. While the total number of legislative committee meetings and public hearings that could occur during the interim to review proposed rules can not be determined, per diem and expense costs amount to approximately \$1,375 per day. Additional appropriations may be required for advertising costs and committee staff.

State departments and agencies may also incur costs related to the potential increase in the number of formal public hearings. The amount of the costs and the departments and agencies affected can not be determined at this time.'

STATEMENT OF FACT

This amendment replaces the bill. It amends the Administrative Procedure Act to provide for greater legislative oversight of certain new agency rules. Rules adopted pursuant to authorizing legislation enacted after January 1, 1996 are divided into 2 categories, routine technical and major substantive. Any rules authorized in the future will be assigned to a category in

R 012

COMMITTEE AMENDMENT "A" to H.P. 806, L.D. 1123

2 the authorizing legislation. Routine technical rules are subject
to current rule-making requirements. The most significant or
4 controversial type of rule, major substantive, is subject to a
higher level of legislative scrutiny. Proposed major substantive
6 rules must be reviewed by the Legislature before they may be
implemented by an agency. Following review, the Legislature may
8 enact legislation authorizing final agency adoption of all or
part of the rule or overriding the proposed rule. If the
Legislature fails to act, the agency may adopt and implement the
10 rule.

12 The amendment also adds a fiscal note to the bill.

COMMITTEE AMENDMENT