

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1906

H.P. 1323

House of Representatives, March 16, 1999

**An Act to Amend the Maine Administrative Procedure Act Pertaining to
Major Substantive Rules Review.**

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

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative FULLER of Manchester.
Cosponsored by Senator PENDLETON of Cumberland and
Representatives: COLWELL of Gardiner, POWERS of Rockport, TWOMEY of Biddeford,
Senator: RAND of Cumberland.

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

2
4 **Sec. 1. 5 MRSA §8071, sub-§3, ¶B,** as enacted by PL 1995, c. 463, §2, is amended to read:

6 B. Major substantive rules are subject to the requirements
8 of section 8072. After January 1, 1996, any grant of
10 general or specific rule-making authority to adopt major
12 substantive rules is considered to be permission only to
14 provisionally adopt those rules subject to legislative
16 review. Final adoption may occur only after legislative
18 review of provisionally adopted rules as provided in section
20 8072. Certain provisional rules may be enforced by an
22 agency pending legislative review as provided in section
24 8072, subsections 1 and 8.

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

22 **Sec. 2. 5 MRSA §8072, sub-§1,** as amended by PL 1997, c. 196,
24 §2, is further amended to read:

26 1. **Preliminary adoption of major substantive rules.** An
28 agency proposing a major substantive rule other than an emergency
30 rule, after filing the notice of proposed rulemaking required by
32 section 8052, shall proceed with rule-making procedures to the
34 point of, but not including, final adoption. At that point,
36 known in this section as "provisional adoption," the agency shall
38 publish notice of provisional adoption with the Secretary of
40 State in the same manner as provided for publication of notice of
42 adoption of final rules under section 8056, subsection 1,
44 paragraph D substituting notice of provisional adoption for
46 notice of final adoption. The publication must include notice
48 that, pending review by the Legislature under this subchapter,
50 the agency will begin enforcement of the provisional rule by a
specified date that is not less than 15 days after publication of
the notice unless the agency receives requests from at least 6
members of the public that it not do so. If fewer than 6
requests are received by the specified date, the agency may
enforce the rule as provisionally adopted until review by the
Legislature under this subchapter is complete. If at least 6
requests are received, the agency may not enforce the rule until
after the Legislature has reviewed the rule and authorized the
final adoption of that rule and the agency has finally adopted
the rule pursuant to this subchapter. In either case, the agency
shall file the provisionally adopted rule and related materials
with the Secretary of State as provided in section 8056,

2 subsection 1, paragraph B and submit the rule to the Legislature
for review and authorization for final adoption as provided in
3 this section. ~~The rule has legal effect only after review by the~~
4 ~~Legislature followed by final adoption by the agency.~~

6 **Sec. 3. 5 MRSA §8072, sub-§8**, as enacted by PL 1995, c. 463,
§2, is amended to read:

8
10 **8. Final adoption; effective date.** Unless otherwise
provided by law, final adoption of a rule by an agency must occur
12 within 60 days of the effective date of the legislation approving
that rule or of the adjournment of the session at which that rule
14 is reviewed if no legislation is enacted. Finally adopted rules
must be filed with the Secretary of State as provided in section
16 8056, subsection 1, paragraph B and notice must be published as
provided in section 8056, subsection 1, paragraph D. An agency
18 rule authorized by the Legislature becomes effective 30 days
after filing with the Secretary of State or at a later date
20 specified by the agency. A provisional rule for which fewer than
6 requests to delay enforcement have been received under
subsection 1 is effective as provided in that subsection and
continues in effect following review of the Legislature if the
Legislature does not require a change in the rule or disapprove
the rule. If the Legislature requires a change or changes in the
rule, the agency must finally adopt and file the rule and it
takes effect as provided in this subsection.

28
30 **SUMMARY**

32 This bill amends the Maine Administrative Procedure Act to
34 require that a major substantive rule that has been provisionally
adopted by an agency may be enforced by the agency pending review
36 by the Legislature unless the agency receives requests from at
least 6 members of the public that the agency not enforce the
rule until legislative review is complete.