

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 2131

S.P. 755

In Senate, March 31, 1999

**An Act to Ensure that Agency Use of Collaborative Decision-making
and Stakeholder Processes is Fair and Consistent with the Goals of the
Maine Administrative Procedure Act.**

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator TREAT of Kennebec.
Cosponsored by Senator PENDLETON of Cumberland, Representatives: COWGER of
Hallowell, DAIGLE of Arundel, HATCH of Skowhegan, JOY of Crystal, SAMSON of Jay.

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

4 **Sec. 1. 5 MRSA §8005** is enacted to read:

6 **§8005. Stakeholder process**

8 **1. Definitions.** As used in this section, unless the
context otherwise indicates, the following terms have the
following meanings.

10 **A. "Stakeholder" means a person, organization or entity**
with an identifiable interest that will be directly or
indirectly affected by a proposed regulatory action.

12 **B. "Stakeholder process" means a collaborative,**
agreement-seeking, consensus-based process in which a
proposed substantive agency policy or rule is developed by a
group composed of all those interests that will be affected
by the policy or rule, including stakeholders and those
interests represented by the agency.

14 **2. Procedural rules required.** By July 15, 2000, each state
agency that engages in stakeholder processes in the development
of substantive policy or rules shall adopt procedural rules
governing the process. These procedural rules are routine
technical rules pursuant to subchapter II-A.

16 The procedural rules developed by an agency must address the
following considerations:

18 **A. The appropriateness of the particular policy and**
proceeding for stakeholder process, including whether agency
leaders support the process and will devote sufficient time
and resources to sustain it and whether
information-gathering procedures are adequate;

20 **B. The ability of all necessary stakeholders to**
participate; whether the necessary stakeholders have
adequate time, expertise and funding to participate in a
meaningful fashion; and whether all necessary stakeholders
are willing and able to send representatives to participate
or are supportive of a collaborative process;

22 **C. The availability of mechanisms, such as funding, to**
ensure stakeholder participation in the process;

24 **D. The development of ground rules that may be mutually**
agreed upon by all stakeholders;

26 **E. Provision for a mutually acceptable neutral facilitator**
accountable to all stakeholders, unless the stakeholders
agree that a facilitator is not necessary; and

2 F. Public information and notice provisions.

4 3. Inclusion in record. When an agency engages a
6 stakeholder process that results in rulemaking, the agency must
 include in the record of rulemaking:

8 A. A list of all meetings held, the participants of each
 meeting and the stakeholders they represented;

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B. Minutes from the meetings; and

C. An analysis by the agency of the stakeholder process and
 the decisions that came out of that process, as part of the
 summary and basis statement required pursuant to section
 8052.

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4. Judicial review. An agency action to establish, assist
 or terminate a stakeholder process is not subject to judicial
 review. An agency's failure to follow its procedural rules as
 established by this section may be grounds for appeal. Nothing
 in this section bars judicial review of a rule adopted by an
 agency following a stakeholder process if such a review is
 otherwise available by law. A rule that is the product of a
 stakeholder process and subject to judicial review is not
 accorded any greater deference by a court than a rule that is the
 product of other rule-making procedures.

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Sec. 2. Division of Administrative Hearings within Department of
 Labor to develop model procedural rules. By April 15, 2000 the
 Division of Administrative Hearings within the Department of
 Labor shall develop model procedural rules to govern stakeholder
 process and to govern the use of alternative dispute resolution
 in adjudicatory proceedings. In developing these model rules,
 the division shall consider the Texas Negotiated Rulemaking Act,
 the Society of Professionals in Dispute Resolution publication
 entitled "Best Practices for Government Agencies" and current
 provisions of the Maine Administrative Procedure Act.

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Sec. 3. Agency adoption of procedural rules. In developing the
 procedural rules in accordance with the Maine Revised Statutes,
 Title 5, section 8005, an agency shall review and may consider
 the model procedural rules developed by the Division of
 Administrative Hearings within the Department of Labor pursuant
 to section 2 of this Act, the Texas Negotiated Rulemaking Act and
 the Society of Professionals in Dispute Resolution publication
 entitled "Best Practices for Government Agencies."

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SUMMARY

This bill makes the following changes to law.

1. It requires that all state agencies that engage in stakeholder processes adopt procedural rules governing the process.
2. It specifies what an agency that engages in stakeholder processes resulting in rulemaking must include in the record of rulemaking.
3. It specifies that an agency's failure to follow its procedural rules for stakeholder processes may be grounds for appeal.
4. It requires the Division of Administrative Hearings within the Department of Labor to develop model procedural rules to govern stakeholder processes.