

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 252

H.P. 207

House of Representatives, January 23, 2003

An Act to Require that Agency Rules be Reviewed by the Legislature

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND
Clerk

Presented by Representative CLOUGH of Scarborough.

Cosponsored by Senator NASS of York and

Representatives: BRUNO of Raymond, CARR of Lincoln, CURLEY of Scarborough,
GOODWIN of Pembroke, JOY of Crystal, PEAVEY-HASKELL of Greenbush, Senators:
GILMAN of Cumberland, STANLEY of Penobscot.

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

4 **Sec. 1. 5 MRSA c. 375, sub-c. 2-A** is amended by repealing the
subchapter headnote and enacting the following in its place:

6 **SUBCHAPTER 2-A**

8 **RULE-MAKING PROCEDURES GOVERNING RULES**
10 **AUTHORIZED AND ADOPTED AFTER JANUARY 1, 1996**
AND BEFORE JANUARY 1, 2004

12 **Sec. 2. 5 MRSA §8071**, as amended by PL 1995, c. 574, §1, is
14 further amended to read:

16 **§8071. Legislative review of certain agency rules**

18 Except as otherwise provided in this subchapter, rules
adopted pursuant to rule-making authorization delegated to an
20 agency after January 1, 1996 and before January 1, 2004 are
subject to the procedures of this subchapter and subchapter ~~II~~ 2.

22 **1. Legislative action.** All new rules authorized to be
adopted by delegation of legislative authority that is enacted
24 after January 1, 1996 and before January 1, 2004, including new
rules authorized by amendment of provisions of laws in effect on
26 that date, must be assigned by the Legislature to one of 2
categories and subject to the appropriate level of rule-making
28 procedures as provided in this subchapter. The Legislature shall
assign the category and level of review to all rules at the time
30 it enacts the authorizing legislation. The Legislature may
assign different categories and levels of review to different
32 types of rules authorized by the same legislation.

34 **2. Categories of rules.** There are 2 categories of rules
authorized for adoption after January 1, 1996 and before January
36 1, 2004.

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

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

50

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

4 (2) Because of their subject matter or anticipated
6 impact, are reasonably expected to result in a
8 significant increase in the cost of doing business, a
10 significant reduction in property values, the loss or
12 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.

14 **3. Levels of rule-making process.** In order to provide for
16 maximum agency flexibility in the adoption of rules while
retaining appropriate legislative oversight over certain rules
18 that are expected to be controversial or to have a major impact
on the regulated community, each agency rule authorized and
20 adopted after January 1, 1996 and before January 1, 2004 is
subject to one of 2 levels of rule-making requirements.

22 A. Routine technical rules are subject to the rule-making
24 requirements of subchapter ~~II~~ 2 only.

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

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

40 **Sec. 3. 5 MRSA c. 375, sub-c. 2-B** is enacted to read:

42 **SUBCHAPTER 2-B**

44 **RULE-MAKING PROCEDURES GOVERNING RULES**
46 **AUTHORIZED AND ADOPTED AFTER JANUARY 1, 2004**

48 **§8081. Legislative review of agency rules**

50 Notwithstanding any other provisions, all rules adopted
pursuant to rule-making authority delegated to an agency on or

2 after January 1, 2004, including rules authorized by amendment of
3 provisions of laws in effect on that date, are major substantive
4 rules and subject to the rule-making requirements as provided in
5 subchapter 2 and subchapter 2-A.

6 1. Legislative action. All new rules authorized for
7 adoption on or after January 1, 2004 are major substantive rules
8 and not subject to categorization by the Legislature.

10 2. Categories of rules. Rules authorized for adoption
11 prior to January 1, 2004 retain their status as either routine
12 technical or major substantive rules.

14 3. Levels of rule-making process. All new rules authorized
15 on or after January 1, 2004 are subject only to the rule-making
16 requirements of major substantive rules as provided in sections
17 8072, 8073 and 8074.

20 SUMMARY

22 This bill makes all new rules authorized and adopted after
23 January 1, 2004 major substantive rules. All rules authorized
24 prior to January 1, 2004 will retain their status established in
25 statute as either routine technical or major substantive rules.
26