

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1393

H.P. 1019

House of Representatives, March 19, 2003

**An Act To Provide for Meaningful Public Input in the Maine
Administrative Procedure Act**

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative McLAUGHLIN of Cape Elizabeth.
Cosponsored by Senator NASS of York and
Representatives: BARSTOW of Gorham, CURLEY of Scarborough, O'BRIEN of Augusta,
Senators: BRENNAN of Cumberland, ROTUNDO of Androscoggin.

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

4 **Sec. 1. 5 MRSA §8052, sub-§3,** as enacted by PL 1977, c. 551,
§3, is amended to read:

6 **3. Statements and arguments filed.** When a public hearing is
8 held, written statements and arguments concerning the proposed
10 rule may be filed with the agency within 10 days after the close
12 of the public hearing, or within such longer time as the agency
may direct. The agency shall specifically consider each and
every written statement and argument as part of its
responsibility under subsections 4 and 5.

14 **Sec. 2. 5 MRSA §8052, sub-§3-A** is enacted to read:

16 **3-A. Copies of proposed rules available upon request.**
18 Copies of proposed rules must be made available in accordance
with the following:

20 A. An agency shall make copies of the proposed rule
22 available to persons upon request and also post the proposed
24 rule on the agency's publicly accessible site on the
Internet on the earliest of the following dates:

26 (1) At least 20 days prior to hearing on any proposed
rule;

28 (2) At least 30 days prior to the comment deadline of
any rule; and

30 (3) The date of publication of notice.

32 B. The agency must include with a copy of the proposed rule
34 a summary stating the exact nature of the proposed rule; the
36 effect of the proposed rule on the substantive services
38 provided under the rule or affected by the rule; the
40 cost-effectiveness of the proposed rule to the State; the
42 effect that the proposed rule would have on programs outside
44 of State Government that are subject to the proposed rule;
or the effect of the proposed rule on any reimbursement for
services that are subject to the proposed rule. The summary
must also include the underlying basis for the statements or
conclusions.

46 **Sec. 3. 5 MRSA §8052, sub-§4,** as amended by PL 1991, c. 632,
§1, is further amended to read:

48 **4. Relevant information considered.** The agency shall
50 consider all relevant information available to it, including, but
not limited to, economic, environmental, fiscal and social impact

2 analyses and statements and arguments filed, before adopting any
3 rule. The agency shall make a good faith attempt to determine,
4 based upon current financial, empirical and study data from the
5 State or from other jurisdictions the substantive and financial
6 effect of the proposed rule. The agency shall specify all data
7 that it considers in the written statement and its conclusions
8 with respect to the data. The agency shall consider all
9 arguments and statements filed with respect to the rule,
10 determine whether to accept or reject those arguments and in its
11 final written statement under subsection 5, state specific
12 reasons why those statements and arguments have been accepted or
13 rejected. This determination must be specific and must cite
14 authority and underlying reasoning. The decision must
15 incorporate all such material in its written statement. The
16 agency shall promptly make available, whether before or after any
17 hearing or decision, any relevant information that it has
18 considered, including intradepartmental and interdepartmental
19 communications and material, in such a way that individuals
20 desiring to comment on the rule have an opportunity to comment on
21 the material.

22 **Sec. 4. 5 MRS §8052, sub-§5,** as amended by PL 1997, c. 196,
23 §1, is further amended to read:

24 **5. Written statement adopted.** At the time of adoption of
25 any rule, the agency shall adopt a written statement explaining
26 the factual and policy basis for the rule. The agency shall list
27 the names of persons whose comments were received, including
28 through testimony at hearings, the organizations the persons
29 represent and summaries of their comments. The agency shall
30 address the specific comments and concerns expressed about any
31 proposed rule and state its rationale for adopting any changes
32 from the proposed rule, failing to adopt the suggested changes or
33 drawing findings and recommendations that differ from those
34 expressed about the proposed rule. The statement must be
35 specific, and must cite authority and underlying reasoning.

36 **A.** ~~If the same or similar comments or concerns about a~~
37 ~~specific issue were expressed by different persons or~~
38 ~~organizations, the agency may synthesize these comments and~~
39 ~~concerns into a single comment that accurately reflects the~~
40 ~~meaning and intent of these comments and concerns to be~~
41 ~~addressed by the agency, listing the names of the persons~~
42 ~~who commented and the organizations they represent. The~~
43 agency shall provide the names and respective positions of
44 those persons in the agency responsible for the analysis and
45 determination of the final language of the rule and shall
46 attach as an appendix to the rule any written data,
47 empirical data or other data relied upon in the agency's
48 decision making.

2 B. A rule may not be adopted unless the adopted rule is
4 consistent with the terms of the proposed rule, except to
6 the extent that the agency determines that it is necessary
8 to address concerns raised in comments about the proposed
10 rule, or specific findings are made supporting changes to
12 the proposed rule. The agency shall maintain a file for
14 each rule adopted that must include, in addition to other
16 documents required by this Act, testimony, comments, the
18 names of persons who commented and the organizations they
20 represent and information relevant to the rule and
22 considered by the agency in connection with the formulation,
proposal or adoption of a rule. If an agency determines
that a rule that the agency intends to adopt is
substantially different from the proposed rule, the agency
shall request comments from the public concerning the
changes from the proposed rule. The agency may not adopt
the rule for a period of 30 days from the date comments are
requested pursuant to this paragraph. Notice of the request
for comments must be published by the Secretary of State in
the same manner as notice for proposed or adopted rules.

24 C. If the adoption under this subsection is final adoption
26 of a major substantive rule under subchapter II-A 2-A, the
28 agency must include in its written statement citation of the
30 legislative act authorizing final adoption of that rule; or,
if authorization is the result of failure of the Legislature
to act under section 8072, subsection 7, the agency must
indicate that fact and identify the date the agency filed
the rule for review under section 8072.

32 **Sec. 5. 5 MRSA §8052, sub-§5-B** is enacted to read:

34 **5-B. Rules affecting social and mental health services.** In
36 adopting rules, an agency proposing rules that affect social and
38 mental health services provided to the State or its citizens
40 through, but not limited to, the Department of Human Services,
42 the Department of Behavioral and Developmental Services, the
44 Department of Corrections and the Department of Education shall
seek to reduce any economic burdens or reduction in services by
taking into account the resources available to those agencies.
An agency shall seek to reduce any economic burdens through
flexible or simplified reporting requirements if they are
applicable.

46 **Sec. 6. 5 MRSA §8052, sub-§6,** as amended by PL 1993, c. 362,
48 §3, is further amended to read:

50 **6. Effective date.** No rule, except emergency rules adopted
under section 8054, becomes effective until at least 5 days after

2 filing with the Secretary of State under section 8056, subsection
1, paragraph B.

4 A rule may not become effective until the Attorney General,
6 pursuant to the provisions of subsection 7, notifies the
8 Secretary of State that the rule is in full compliance with all
9 provisions contained in this section.

10 When the effective date of a rule is contingent upon the
11 occurrence or nonoccurrence of an event, notification of the
12 occurrence or nonoccurrence must be filed with the Secretary of
13 State when known.

14 **Sec. 7. 5 MRSA §8052, sub-§7, ¶B,** as enacted by PL 1985, c.
15 39, §1, is amended to read:

16 B. This adopted rule is approved by the Attorney General as
17 to form and legality, as required by this section and
18 section 8056, within 150 days of the final date by which
19 those comments may be submitted.

22 SUMMARY

24 This bill amends the rule-making process to clarify the
25 intent of the Legislature to require agencies to consider the
26 full impact of the rules, both substantively and financially, on
27 the State, agencies, providers of services through state
28 contracts and consumers of those services. The provisions of
29 this bill require a detailed analysis at the time of the
30 proposal, consideration and adoption of any proposed rule.