

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1212

H.P. 837

House of Representatives, March 26, 2009

### **An Act To Clarify the Role of Public Comment in the Agency Decision-making Process**

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative PRATT of Eddington.

Cosponsored by Representatives: BERRY of Bowdoinham, CRAY of Palmyra, GIFFORD of Lincoln, JOY of Crystal, McCABE of Skowhegan, PIOTTI of Unity.

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

2 **Sec. 1. 5 MRSA §8052, sub-§5**, as amended by PL 1997, c. 196, §1, is further  
3 amended to read:

4 **5. Written statement adopted.** At the time of adoption of any rule, the agency shall  
5 adopt a written statement explaining the factual and policy basis for the rule. The agency  
6 shall list the names of persons whose comments were received, including through  
7 testimony at hearings, the organizations the persons represent and summaries of their  
8 comments. The agency shall state the ratio of comments received in terms of the number  
9 of persons opposed and the number of persons in favor. The agency shall address the  
10 specific comments and concerns expressed about any proposed rule and state its rationale  
11 for adopting any changes from the proposed rule, failing to adopt the suggested changes  
12 or drawing findings and recommendations that differ from those expressed about the  
13 proposed rule.

14 A. If the same or similar comments or concerns about a specific issue were  
15 expressed by different persons or organizations, the agency may synthesize these  
16 comments and concerns into a single comment that accurately reflects the meaning  
17 and intent of these comments and concerns to be addressed by the agency, listing the  
18 names of the persons who commented and the organizations they represent.

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

33 C. If the adoption under this subsection is final adoption of a major substantive rule  
34 under subchapter ~~H-A~~ 2-A, the agency must include in its written statement citation  
35 of the legislative act authorizing final adoption of that rule; or, if authorization is the  
36 result of failure of the Legislature to act under section 8072, subsection 7, the agency  
37 must indicate that fact and identify the date the agency filed the rule for review under  
38 section 8072.

39 **Sec. 2. 5 MRSA §8072, sub-§2, ¶B-1** is enacted to read:

40 B-1. A summary of the public comments received pursuant to section 8052,  
41 subsection 5, including a brief statement of the ratio of persons with favorable  
42 comments and persons with unfavorable comments relating to the rule.

