

# MAINE STATE LEGISLATURE

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Date: 3/24/10

L.D. 1784

(Filing No. H-777)

Minority

**EDUCATION AND CULTURAL AFFAIRS**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
124TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1272, L.D. 1784, Bill, "An Act Regarding the Commissioner of Education's Rule-making Authority"

Amend the bill by striking out the title and substituting the following:

**'Resolve, To Establish the Commission To Study the Rule-making Process under the Maine Administrative Procedure Act'**

Amend the bill by striking out everything after the title and inserting the following:

**'Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** this resolve establishes the Commission To Study the Rule-making Process under the Maine Administrative Procedure Act to study the process surrounding emergency rulemaking and major substantive rulemaking to ensure that the intentions of the Legislature are carried out; and

**Whereas,** the study must be initiated before the 90-day period expires in order that the study may be completed and a report submitted in time for submission to the next legislative session; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sec. 1. Commission established. Resolved:** That the Commission To Study the Rule-making Process under the Maine Administrative Procedure Act, referred to in this resolve as "the commission," is established; and be it further

**Sec. 2. Commission membership. Resolved:** That the commission consists of 8 members as follows:

- 1. Two members of the Senate appointed by the President of the Senate, including one member from the Joint Standing Committee on State and Local Government and one

**COMMITTEE AMENDMENT**

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1 member from the Joint Standing Committee on Education and Cultural Affairs. The  
2 appointments must include members from each of the 2 parties holding the largest  
3 number of seats in the Legislature;

4 2. Three members of the House of Representatives appointed by the Speaker of the  
5 House, including at least one member from the Joint Standing Committee on State and  
6 Local Government and one member from the Joint Standing Committee on  
7 Appropriations and Financial Affairs. The appointments must include members from  
8 each of the 2 parties holding the largest number of seats in the Legislature;

9 3. The Secretary of State or the Secretary of State's designee;

10 4. The Attorney General or the Attorney General's designee; and

11 5. One public member with expertise in the rule-making process appointed by the  
12 President of the Senate; and be it further

13 **Sec. 3. Chairs. Resolved:** That the first-named Senate member is the Senate  
14 chair and the first-named House of Representatives member is the House chair of the  
15 commission; and be it further

16 **Sec. 4. Appointments; convening of commission. Resolved:** That all  
17 appointments must be made no later than 30 days following the effective date of this  
18 resolve. The appointing authorities shall notify the Executive Director of the Legislative  
19 Council once all appointments have been completed. After appointment of all members,  
20 the chairs shall call and convene the first meeting of the commission. If 30 days or more  
21 after the effective date of this resolve a majority of but not all appointments have been  
22 made, the chairs may request authority and the Legislative Council may grant authority  
23 for the commission to meet and conduct its business; and be it further

24 **Sec. 5. Duties. Resolved:** That the commission shall study issues related to the  
25 Maine Administrative Procedure Act. In conducting the study, the commission shall  
26 examine:

27 1. The circumstances surrounding the adoption of emergency rules, in particular  
28 major substantive rules, to ensure that the process of adopting an emergency rule is  
29 applied only when there is truly an emergency;

30 2. The Legislature's role in reviewing major substantive rules, including whether  
31 sufficient information is being provided by agencies, oversight functions are adequate and  
32 appropriate notice is being provided to the public, and the implications for state agencies  
33 of the statutory deadline for submitting major substantive rules to the Legislature; and

34 3. The relationship between the intention of the Legislature in adopting specific  
35 content in a major substantive rule and the rule as drafted by the department; and be it  
36 further

37 **Sec. 6. Staff assistance. Resolved:** That the Legislative Council shall provide  
38 necessary staffing services to the commission; and be it further

39 **Sec. 7. Report. Resolved:** That, no later than November 3, 2010, the  
40 commission shall submit a report that includes its findings and recommendations,  
41 including suggested legislation, for presentation to the First Regular Session of the 125th

R. 128

COMMITTEE AMENDMENT "A" to H.P. 1272, L.D. 1784

1 Legislature. The joint standing committee of the Legislature having jurisdiction over  
2 state and local government matters is authorized to introduce a bill related to the subject  
3 matter of the report to the First Regular Session of the 125th Legislature.

4 **Emergency clause.** In view of the emergency cited in the preamble, this  
5 legislation takes effect when approved.'

6 **SUMMARY**

7 This amendment, which is the minority report of the committee, replaces the bill with  
8 a resolve. It establishes the Commission To Study the Rule-making Process under the  
9 Maine Administrative Procedure Act to examine issues relating to emergency rules and  
10 major substantive rules, including the adequacy of information, legislative oversight and  
11 notice, the implications for state agencies of the statutory deadline for submitting major  
12 substantive rules to the Legislature and the relationship between legislative intention and  
13 the rule as drafted by a department. The amendment authorizes the commission to make  
14 findings and recommendations and to submit suggested legislation. The joint standing  
15 committee of the Legislature having jurisdiction over state and local government matters  
16 is authorized to submit a bill to the First Regular Session of the 125th Legislature.

**FISCAL NOTE REQUIRED**  
(See attached)



# 124th MAINE LEGISLATURE

LD 1784

LR 2535(02)

## An Act Regarding the Commissioner of Education's Rule-making Authority

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Education and Cultural Affairs

Fiscal Note Required: Yes

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### Fiscal Note

Legislative Cost/Study  
Minor cost increase - General Fund

#### Legislative Cost/Study

The general operating expenses of this study are projected to be \$3,050 in fiscal year 2010-11. The Legislature's budget includes \$10,000 in fiscal year 2010-11 for legislative studies. Whether the amounts are sufficient to fund all studies will depend on the number of studies authorized by the Legislative Council and the Legislature.

#### Fiscal Detail and Notes

Additional costs to the Department of the Attorney General and the Department of Secretary of State associated with serving on the Commission can be absorbed within existing budgeted resources.