

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1125

H.P. 837

House of Representatives, March 15, 2011

**An Act To Implement the Recommendations of the Joint Standing
Committee on State and Local Government To Make Necessary
Changes to the Maine Administrative Procedure Act**

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

A handwritten signature in black ink, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST
Clerk

Presented by Representative BOLAND of Sanford.
Cosponsored by Senator THOMAS of Somerset and
Representatives: BOLDUC of Auburn, CASAVANT of Biddeford, COTTA of China,
GRAHAM of North Yarmouth, HARVELL of Farmington, KAENRATH of South Portland,
MOULTON of York, Senator: SULLIVAN of York.

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

2 **Sec. 1. 5 MRSA §8054, sub-§2**, as amended by PL 2007, c. 581, §4, is further
3 amended to read:

4 **2. Agency findings.** Any emergency rule must include, with specificity, the agency's
5 findings with respect to the existence of an emergency, including any modifications of
6 procedures, and such findings are subject to judicial review under section 8058. Such
7 findings must be included in any proposed or adopted emergency rule in a section labeled
8 "findings." No emergency may be found to exist when the primary cause of the
9 emergency is delay caused by the agency involved.

10 **Sec. 2. 5 MRSA §8054, sub-§4** is enacted to read:

11 **4. Fiscal impact; curtailment orders.** An emergency rule proposed or adopted in
12 whole or in part to satisfy the requirements of a temporary curtailment order by the
13 Governor under section 1668 must include a specification of the dollar amount of
14 curtailed funds attributable to each change proposed or adopted in the rule.

15 **Sec. 3. 5 MRSA §8071-A** is enacted to read:

16 **§8071-A. Definitions**

17 As used in this subchapter, unless the context otherwise indicates, the following
18 terms have the following meanings.

19 **1. Legislative review session.** "Legislative review session" means the regular
20 session of the Legislature convening after the beginning of the legislative rule acceptance
21 period.

22 **2. Legislative rule acceptance period.** "Legislative rule acceptance period" means
23 the period beginning on the July 1st preceding the convening of a regular session of the
24 Legislature and ending at 5:00 p.m. on the 2nd Friday in January after the convening of
25 that regular session of the Legislature.

26 **Sec. 4. 5 MRSA §8072, sub-§3**, as amended by PL 1995, c. 574, §2, is further
27 amended to read:

28 **3. Legislative review; legislative instrument prepared.** ~~Upon receipt of~~ If the
29 required copies of the provisionally adopted rule and related information, are received by
30 the Executive Director of the Legislative Council during the legislative rule acceptance
31 period, the Executive Director shall immediately forward the materials to notify the
32 Revisor of Statutes, who shall draft an appropriate legislative instrument to allow for
33 legislative review and action upon the provisionally adopted rule during the legislative
34 review session. The Secretary of the Senate and the Clerk of the House for placement
35 shall place the legislative instrument on the Advance Journal and Calendar and
36 distribution to a committee as provided in this subsection. The secretary and clerk shall
37 jointly suggest reference of the legislative instrument to a joint standing committee of the
38 Legislature that has jurisdiction over the subject matter of the proposed rule and shall

1 provide for publication of that suggestion in the Advance Journal and Calendar first in the
2 Senate and then in the House of Representatives no later than the next legislative day
3 following receipt of the legislative instrument. After floor action on referral of the ~~rule~~
4 legislative instrument to committee is completed, the Secretary of the Senate and the
5 Clerk of the House of Representatives shall send copies of the rule and related
6 information to each member of that committee. Each rule submitted for legislative
7 review during the legislative rule acceptance period must be reviewed by the appropriate
8 joint standing committee at a meeting called for that purpose in accordance with
9 legislative rules. A committee may review more than one rule and the rules of more than
10 one agency at a meeting. The committee shall notify the affected agency of the meeting
11 on its proposed rules.

12 **Sec. 5. 5 MRSA §8072, sub-§5**, as enacted by PL 1995, c. 463, §2, is amended to
13 read:

14 **5. Committee recommendation.** After reviewing ~~the~~ a rule referred to it by the
15 Legislature, the committee shall recommend:

- 16 A. That the Legislature authorize the final adoption of the rule;
- 17 B. That the Legislature authorize the final adoption of a specified part of the rule;
- 18 C. That the Legislature authorize the final adoption of the rule with certain specified
19 amendments; or
- 20 D. That the final adoption of the rule be disapproved by the Legislature.

21 The committee shall notify the agency proposing the rule of its recommendation. When
22 the committee makes a recommendation under paragraph B, C or D, the notice must
23 contain a statement of the reasons for that recommendation.

24 **Sec. 6. 5 MRSA §8072, sub-§6**, as enacted by PL 1995, c. 463, §2, is repealed.

25 **Sec. 7. 5 MRSA §8072, sub-§7**, as amended by PL 2005, c. 586, §1, is further
26 amended to read:

27 **7. Report to the Legislature.** ~~No~~ Unless otherwise provided by the Legislature,
28 each joint standing committee of the Legislature that receives a rule submitted during the
29 legislative rule acceptance period shall report to the Legislature its recommendations
30 concerning final adoption of the rule no later than 30 days before statutory adjournment
31 of the Legislature legislative review session as provided in Title 3, section 2 each joint
32 standing committee of the Legislature shall submit to the Secretary of the Senate and the
33 Clerk of the House of Representatives the committee's report on agency rules the
34 committee has reviewed as provided in this section. The report must include a copy of
35 the rule or rules reviewed, the committee's recommendation concerning final adoption of
36 the rule or rules, a statement of the reasons for a recommendation to withdraw or modify
37 the rule or rules and draft legislation for introduction in that session that is necessary to
38 implement the committee's recommendation. A committee may decline to include in its
39 report recommendations covering any rules submitted to it later than 5:00 p.m. on the 2nd
40 Friday in January of the year in which the rules are to be considered by the committee. If,
41 before adjournment of the session at which a rule is reviewed, the Legislature fails to act

1 on all or part of any rule submitted to it for review in accordance with this section, an
2 agency may proceed with final adoption and implementation of the rule or part of the rule
3 that was not acted on.

4 **Sec. 8. 5 MRSA §8072, sub-§8**, as enacted by PL 1995, c. 463, §2, is amended to
5 read:

6 **8. Final adoption; effective date.** Unless otherwise provided by law, final adoption
7 of a rule or part of a rule by an agency must occur within 60 days of the effective date of
8 the legislation approving that rule or part of that rule or of the adjournment of the session
9 at which that rule is reviewed if no legislation is enacted in which the Legislature failed to
10 act on the rule or part of the rule as specified in subsection 11. Finally adopted rules must
11 be filed with the Secretary of State as provided in section 8056, subsection 1, paragraph B
12 and notice must be published as provided in section 8056, subsection 1, paragraph D. ~~An~~
13 ~~agency rule authorized by the Legislature becomes~~ Except as otherwise specified by law,
14 the rules become effective 30 days after filing with the Secretary of State or at a later date
15 specified by the agency.

16 **Sec. 9. 5 MRSA §8072, sub-§10** is enacted to read:

17 **10. Rules submitted outside legislative rule acceptance period.** The Legislature
18 may act or decline to act upon any rules submitted outside the legislative rule acceptance
19 period.

20 **Sec. 10. 5 MRSA §8072, sub-§11** is enacted to read:

21 **11. Prohibited final adoption.** A provisionally adopted rule or part of a
22 provisionally adopted rule may not be finally adopted by an agency unless:

23 A. Legislation authorizing adoption of the rule or part of the rule is enacted into law;
24 or

25 B. The agency submits the rule or part of the rule in accordance with this section
26 during the legislative rule acceptance period and the Legislature fails to act on the
27 rule or part of the rule.

28 For purposes of this subsection, the Legislature fails to act on a rule or part of a rule if the
29 Legislature fails to enact legislation authorizing adoption or disapproving adoption of the
30 rule or part of the rule during the legislative review session or during any subsequent
31 session to which a legislative instrument expressly providing for approval or disapproval
32 of the rule or part of the rule is carried over. Nothing in this section requires the
33 Legislature to use the legislative instrument produced pursuant to subsection 3 to approve
34 or disapprove of a rule or part of a rule.

35 SUMMARY

36 This bill implements the statutory recommendations of the Joint Standing Committee
37 on State and Local Government resulting from its study of the Maine Administrative
38 Procedure Act pursuant to Resolve 2009, chapter 207.

1 This bill clarifies that a provisionally adopted major substantive rule submitted for
2 legislative review after the statutory deadline for submission may not be finally adopted
3 unless legislation authorizing its adoption is enacted into law or the agency follows the
4 procedure under the Maine Revised Statutes, Title 5, section 8072 as amended in this bill
5 and the Legislature fails to act. This bill also specifies that an emergency rule must
6 include the agency's findings with respect to the existence of an emergency in a section
7 labeled "findings" and that emergency rules proposed or adopted in whole or in part to
8 satisfy the requirements of a temporary curtailment order must include a specification in
9 the rule of the dollar amount of curtailed funds attributable to each change adopted in the
10 rule.