

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

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No. 1744

H.P. 1123

House of Representatives, April 20, 2023

**An Act to Strengthen Accountability in Rulemaking by Providing
for Legislative Oversight**

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

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative ANDREWS of Paris.

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

2 **Sec. 1. 3 MRSA §165-A** is enacted to read:

3 **§165-A. Joint Committee on Administrative Rules**

4 The Joint Committee on Administrative Rules, referred to in this section as "the
5 committee," is established to review certain rule filings in accordance with Title 5, chapters
6 375 and 379.

7 **1. Membership.** The committee is composed of 13 members appointed at the
8 beginning of each First Regular Session of the Legislature as follows:

9 A. Six members appointed by the President of the Senate;

10 B. Six members appointed by the Speaker of the House of Representatives; and

11 C. One member appointed by the Speaker of the House of Representatives in every
12 odd-numbered Legislature, beginning with the 131st Legislature, and one member
13 appointed by the President of the Senate in every even-numbered Legislature,
14 beginning with the 132nd Legislature.

15 **2. Term.** Members serve for the full term of the Legislature in which they were
16 appointed, unless removed in accordance with rules of the Legislature.

17 **3. Chairs; subcommittees.** The first member appointed by the President of the Senate
18 shall serve as the Senate Chair, and the first member appointed by the Speaker of the House
19 shall serve as the House Chair. In order to assist the committee in its review of major
20 substantive rules in accordance with Title 5, chapter 375, subchapter 2-A, the Senate Chair
21 shall appoint a subcommittee of Senate members and the House Chair shall appoint a
22 subcommittee of House members.

23 **4. Duties.** The committee shall review rule filings in accordance with the following
24 provisions of law:

25 A. The Secretary of State's list of rules adopted in the previous calendar year, in
26 accordance with Title 5, section 8053-A;

27 B. The Secretary of State's report on rule-making activities in the previous calendar
28 year, in accordance with Title 5, section 8056-A;

29 C. Regulatory agendas, in accordance with Title 5, section 8060;

30 D. Major substantive rules, in accordance with Title 5, chapter 375, subchapter 2-A;

31 E. Petitions for review of rules, in accordance with Title 5, chapter 377-A.

32 **Sec. 2. 3 MRSA §167-A** is enacted to read:

33 **§167-A. Legislative Economic Analysis Unit**

34 The Legislative Economic Analysis Unit, referred to in this section as "the unit," is
35 established within the Legislature to carry out the duties specified in this section.

36 **1. Chief economist.** The administrative head of the unit, referred to in this section as
37 "the chief economist," is jointly appointed at the beginning of each Legislature by the
38 President of the Senate and the Speaker of the House and may be removed or replaced in
39 accordance with applicable rules of the Legislature. The chief economist serves for the term

1 of the Legislature to which the person is appointed and may be reappointed. In the event of
2 a disagreement between the President and the Speaker on an appointment, no appointment
3 is made and the position is vacant until an agreement is reached and the deputy chief shall
4 serve as acting chief economist.

5 **2. Staff.** The unit is staffed by a deputy chief and such professional and other support
6 staff as determined and hired by the chief economist in accordance with policies established
7 by the Legislative Council. The Legislative Council shall determine personnel policies
8 governing the staff, including salary and benefits.

9 **3. Funding.** At the beginning of each First Regular Session, the chief economist, or
10 in the case of a vacancy, the deputy chief, shall determine necessary funding for the unit
11 for the budget biennium and submit the funding amount to the Legislative Council. In
12 providing funding for the unit, the joint standing committee of the Legislature having
13 jurisdiction over appropriations and financial affairs shall use as a reference baseline
14 amount for the budget an amount equal to the sum of 2% of the General Fund
15 appropriations in the Governor's proposed biennial budget for each agency having rule-
16 making authority.

17 **4. Duties.** The unit shall undertake:

18 A. The duties specified in Title 5, section 8075;

19 B. An impact analysis, as defined in Title 5, section 8075, subsection 1, paragraph A,
20 of the acceptance and use of any federal or other grant received by the State, at the
21 request of the President of the Senate, the Speaker of the House or either chair of or a
22 ranking member of any legislative committee with subject matter jurisdiction over the
23 grant; and

24 C. Any other responsibilities assigned to the unit jointly by the President of the Senate
25 and the Speaker of the House or by the Legislature.

26 **Sec. 3. 5 MRSA §8053-A, sub-§5,** as enacted by PL 2011, c. 479, §4, is amended
27 to read:

28 **5. Annual lists of rule-making activity.** By February 1st of each year, the Secretary
29 of State shall provide the Executive Director of the Legislative Council lists by agency of
30 all rules adopted by each agency in the previous calendar year. The Executive Director of
31 the Legislative Council shall refer each list to the ~~appropriate joint standing committee or~~
32 ~~committees of the Legislature~~ Joint Committee on Administrative Rules established under
33 Title 3, section 165-A for review. Each list must include for each rule the following
34 information, which must be submitted by each agency to the Secretary of State:

35 A. The statutory authority for the rule and the rule chapter number and title;

36 B. The principal reason or purpose for the rule;

37 C. A written statement explaining the factual and policy basis for each rule adopted
38 pursuant to section 8052, subsection 5;

39 D. If the rule adopted was routine technical or major substantive;

40 E. If the rule was adopted as an emergency; and

41 F. The fiscal impact of the rule.

1 **Sec. 4. 5 MRSA §8053-A, sub-§6**, as enacted by PL 2011, c. 479, §4, is amended
2 to read:

3 **6. Authority to report out legislation.** After ~~each appropriate joint standing~~
4 ~~committee of the Legislature~~ the Joint Committee on Administrative Rules has received a
5 list of rule-making activity pursuant to subsection 5, the committee may require an agency
6 to appear before the committee, and the committee may report out legislation in the same
7 legislative session in which the report is received to adjust rule-making authority related to
8 the rules adopted in the previous calendar year.

9 **Sec. 5. 5 MRSA §8056-A, sub-§3**, as amended by PL 1991, c. 554, §3, is further
10 amended to read:

11 **3. Report.** The Secretary of State shall report to the Governor and the ~~joint standing~~
12 ~~committee of the Legislature having jurisdiction over state and local government~~ Joint
13 Committee on Administrative Rules established under Title 3, section 165-A prior to
14 February 1st of each year with respect to rule-making activities for the prior year. The
15 report must include statistical information on agency rule-making activities, agency
16 experience with procedural requirements of this subchapter, an evaluation of the
17 codification process, the impact of the electronic text file data base on state agencies and
18 users of the rules and recommendations for improvements to the rule-making process. In
19 preparing the report, the Secretary of State shall solicit comments on this subchapter from
20 agencies and their legal counsels, the Executive Director of the Legislative Council and the
21 public.

22 **Sec. 6. 5 MRSA §8060, first ¶**, as enacted by PL 1989, c. 547, §8, is amended to
23 read:

24 Each agency with the authority to adopt rules shall issue to the ~~appropriate joint~~
25 ~~standing committee or committees of the Legislature~~ Joint Committee on Administrative
26 Rules established under Title 3, section 165-A and to the Secretary of State an agency
27 regulatory agenda as provided in this section.

28 **Sec. 7. 5 MRSA §8060, sub-§5**, as enacted by PL 1989, c. 547, §8, is amended to
29 read:

30 **5. Legislative review of agency regulatory agendas.** Each regulatory agenda shall
31 must be reviewed by the ~~appropriate joint standing committee of the Legislature~~ Joint
32 Committee on Administrative Rules established under Title 3, section 165-A at a meeting
33 called for the purpose. The committee may review more than one agenda at a meeting.

34 **Sec. 8. 5 MRSA §8071-A, sub-§3** is enacted to read:

35 **3. Rules committee.** "Rules committee" or "committee" means the Joint Committee
36 on Administrative Rules established under Title 3, section 165-A.

37 **Sec. 9. 5 MRSA §8072, sub-§3**, as amended by PL 2011, c. 244, §4, is further
38 amended to read:

39 **3. Legislative review; legislative instrument prepared.** If the required copies of the
40 provisionally adopted rule and related information are received by the Executive Director
41 of the Legislative Council during the legislative rule acceptance period, the Executive
42 Director shall notify the Revisor of Statutes, who shall draft an appropriate legislative
43 instrument to allow for legislative review and action upon the provisionally adopted rule

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

16 **Sec. 10. 5 MRSA §8072, sub-§7**, as amended by PL 2011, c. 244, §7, is further
17 amended to read:

18 **7. Report to the Legislature.** Unless otherwise provided by the Legislature, ~~each~~
19 ~~joint standing~~ if the rules committee of the Legislature that receives a rule submitted during
20 the legislative rule acceptance period, the committee shall report to the Legislature ~~its~~ the
21 committee's recommendations concerning final adoption of the rule no later than 30 days
22 before statutory adjournment of the legislative review session as provided in Title 3, section
23 2.

24 **Sec. 11. 5 MRSA §8075** is enacted to read:

25 **§8075. Impact analysis and rule assessments**

26 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
27 following terms have the following meanings:

28 A. "Impact analysis" means an analysis produced by the unit of a state action or
29 proposed state action that identifies sources consulted by the unit, key assumptions
30 made by the unit and any areas of uncertainty with respect to the analysis and that
31 provides:

32 (1) An evaluation of need for the action;

33 (2) Identification of the legal basis for the action;

34 (3) An evaluation of available alternatives;

35 (4) An evaluation of the costs and benefits, including estimates of:

36 (a) Direct benefits, if any, including, but not limited to, cost savings or
37 financial benefits to the State;

38 (b) Compliance costs, if any, for affected entities;

39 (c) Indirect costs, if any, including, but not limited to, administrative costs;

40 (d) Effects on state revenue; and

1 (e) Opportunity costs resulting from the removal or reduction, if any, of private
2 capital in relevant markets.

3 B. "Unit" means the Legislative Economic Analysis Unit established under Title 3,
4 section 167-A.

5 **2. Determinations.** Whenever it is unclear under applicable law whether a rule is a
6 major substantive rule or a routine technical rule, the President of the Senate, the Speaker
7 of the House or either chair of the rules committee may request that the unit determine an
8 appropriate classification of the rule. If the unit finds that the rule is a major substantive
9 rule, the unit shall notify the agency and provide public notice of its finding as well as a
10 description of the process required for final adoption of major substantive rules and shall
11 also notify the Legislature of its ability to take any action it determines to be appropriate
12 with respect to the rule and the authorizing legislation for the rule, including, but not limited
13 to, clarifying the law to designate the rule as major substantive. Notwithstanding any
14 determination by the unit, a court, in any proceeding in which the classification of the rule
15 is at issue, shall decide the issue de novo.

16 **3. Impact analysis of rules.** The unit shall undertake and complete impact analyses
17 of rules in accordance with this subsection.

18 A. Within 15 days of the submission of a provisionally adopted rule in accordance with
19 section 8072, the unit shall complete and make public an impact analysis of the
20 provisionally adopted rule.

21 B. If the unit determines under subsection 2 that a rule is a major substantive rule, the
22 unit shall, within 15 days following that determination, complete and make public an
23 impact analysis of the rule, if one has been proposed or adopted.

24 C. At the request of either chair of the rules committee, the unit shall undertake an
25 impact analysis of any major substantive or routine technical rule. The unit shall
26 complete an impact analysis under this paragraph as resources allow and in the order
27 of the requests received, unless otherwise directed jointly by the President of the Senate
28 and the Speaker of the House.

29 **Sec. 12. 5 MRSA §11111, sub-§2,** as enacted by PL 1981, c. 524, §15, is repealed
30 and the following enacted in its place:

31 **2. Committee.** "Committee" means the Joint Committee on Administrative Rules
32 established under Title 3, section 165-A.

33 **Sec. 13. 5 MRSA §11113, first ¶,** as amended by PL 1985, c. 737, Pt. B, §16, is
34 further amended to read:

35 The executive director shall, upon receipt of an application for review, ~~determine the~~
36 ~~appropriate joint standing committee of the Legislature responsible for review of the rule~~
37 ~~in question~~ and send the application and a copy of the rule in question to each member of
38 the committee. Each member of the committee shall individually review the application to
39 determine whether the applicant is qualified and whether the public interest would be
40 served by a review of the rule in question by the full committee. If a committee member
41 decides that the review should be made, ~~he~~ the committee member shall notify the director
42 within 15 days after notice was sent. If 1/3 or more of the full committee notify the director
43 that a review of the rule should be made, the director shall advise the ~~chairman~~ chairs of

1 the committee, who shall schedule a meeting of the committee to review the rule. If the
2 committee votes not to review the rule, a report to that effect ~~shall~~ must be prepared by the
3 director and sent to the applicant and the Legislative Council.

4 **SUMMARY**

5 This bill does the following.

6 1. It establishes the Joint Committee on Administrative Rules within the Legislature.
7 The committee replaces the joint standing committees in reviewing the list, produced by
8 the Secretary of State, of rules adopted in the previous calendar year; the Secretary of
9 State's report on rule-making activities in the previous calendar year; regulatory agendas
10 submitted by agencies; provisionally adopted major substantive rules; and petitions for
11 review of rules.

12 2. It establishes the Legislative Economic Analysis Unit within the Legislature. The
13 unit is responsible for undertaking impact analysis of major substantive rules and other
14 rules as directed. The unit is also required, whenever it is unclear under applicable law
15 whether a rule is a major substantive rule or a routine technical rule, to make a finding, on
16 request, as to the appropriate classification of the rule. The unit is further directed to
17 produce an impact analysis of the State's acceptance and use of any federal or other grants,
18 at the request of the President of the Senate, Speaker of the House or either chair of or a
19 ranking member of any legislative committee with subject matter jurisdiction over the
20 grant. The unit is responsible for any other work assigned to it jointly by the President of
21 the Senate and the Speaker of the House or by the Legislature.