

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1840

H.P. 1172

House of Representatives, April 27, 2023

**An Act to Reform the State's Administrative and Rule-making
Procedures**

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 **PART A**

3 **Sec. A-1. 5 MRSA §8058, sub-§3** is enacted to read:

4 **3. De novo review.** In interpreting a state statute, rule or subregulatory document, a
5 state court or an officer hearing an administrative action may not defer to an agency's
6 interpretation of it and shall instead interpret its meaning and effect de novo. In actions
7 brought by or against agencies, after applying all customary tools of interpretation, the
8 court or hearing officer shall resolve any remaining doubt in favor of a reasonable
9 interpretation that limits agency power and maximizes individual liberty.

10 **Sec. A-2. 5 MRSA §9061, first ¶**, as enacted by PL 1977, c. 551, §3, is amended
11 to read:

12 Every agency decision made at the conclusion of an adjudicatory proceeding ~~shall~~ **must**
13 be in writing or stated in the record, and ~~shall~~ **must** include findings of fact sufficient to
14 apprise the parties and any interested member of the public of the basis for the decision. A
15 copy of the decision ~~shall~~ **must** be delivered or promptly mailed to each party to the
16 proceeding or ~~his~~ the party's representative of record. Written notice of the party's rights to
17 review or appeal of the decision within the agency or review of the decision by the courts,
18 as the case may be, and of the action required and the time within which such action must
19 be taken in order to exercise the right of review or appeal, ~~shall~~ **must** be given to each party
20 with the decision. In any review or appeal of a decision to a court of this State, the court
21 may not defer to an agency's interpretation of a statute, rule or subregulatory document and
22 shall instead interpret its meaning and effect de novo. After applying all customary tools
23 of interpretation, the court shall resolve any remaining doubt in favor of a reasonable
24 interpretation that limits agency power and maximizes individual liberty.

25 **Sec. A-3. 5 MRSA §11007, sub-§3**, as amended by PL 2021, c. 277, §10, is further
26 amended to read:

27 **3. Judgment.** The court may not substitute its judgment for that of the agency on
28 questions of fact, except that, with respect to a timely appeal by an individual of a denial
29 of a disability determination by a hearing officer pursuant to sections 17106-A and
30 17106-B, the court shall review the matter de novo. The court shall review de novo an
31 agency's interpretation of a statute, rule or subregulatory document. After applying all
32 customary tools of interpretation, the court shall resolve any remaining doubt in favor of a
33 reasonable interpretation that limits agency power and maximizes individual liberty.

34 **PART B**

35 **Sec. B-1. 5 MRSA §8065** is enacted to read:

36 **§8065. Expiration of rules**

37 **1. Expiration of rules.** Notwithstanding any provision of law to the contrary, unless
38 legislation is enacted to continue a rule to a date certain or indefinitely, a finally adopted
39 rule filed with the Secretary of State expires on June 30th of the 5th year following the year
40 of its filing. The postponement of the expiration of a rule does not constitute legislative
41 approval of the rule and is not admissible in any court as evidence of legislative intent.

42 **2. Exceptions.** This section does not apply to:

1 in which the Legislature failed to act on the rule or part of the rule as specified in subsection
2 44. Finally adopted rules must be filed with the Secretary of State as provided in section
3 8056, subsection 1, paragraph B and notice must be published as provided in section 8056,
4 subsection 1, paragraph D. Except as otherwise specified by law, the rules become
5 effective 30 days after filing with the Secretary of State or at a later date specified by the
6 agency.

7 **Sec. C-3. 5 MRSA §8072, sub-§11**, as enacted by PL 2011, c. 244, §10, is amended
8 to read:

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

11 A. Legislation authorizing adoption of the rule or part of the rule is enacted into law;
12 ~~or~~

13 ~~B. The agency submits the rule or part of the rule in accordance with this section during~~
14 ~~the legislative rule acceptance period and the Legislature fails to act on the rule or part~~
15 ~~of the rule.~~

16 ~~For purposes of this subsection, the Legislature fails to act on a rule or part of a rule if the~~
17 ~~Legislature fails to enact legislation authorizing adoption or disapproving adoption of the~~
18 ~~rule or part of the rule during the legislative review session or during any subsequent~~
19 ~~session to which a legislative instrument expressly providing for approval or disapproval~~
20 ~~of the rule or part of the rule is carried over. Nothing in this section requires the Legislature~~
21 ~~to use the legislative instrument produced pursuant to subsection 3 to approve or disapprove~~
22 ~~of a rule or part of a rule.~~

23 **Sec. C-4. 12 MRSA §8867-F**, as enacted by PL 2011, c. 599, §6, is amended to
24 read:

25 **§8867-F. Fee schedule**

26 The bureau shall establish a schedule of fees through rulemaking for the administration
27 of sections 8867-D and 8867-E. ~~Notwithstanding Title 5, section 8071, subsection 2,~~
28 ~~paragraph A, rules~~ Rules adopted pursuant to this section are routine technical rules as
29 defined in Title 5, chapter 375, subchapter 2-A. The bureau may not issue an approval,
30 certificate, special exception or variance until the required fee has been paid.

31 **Sec. C-5. 22 MRSA §2422-A, sub-§2, ¶A**, as enacted by PL 2021, c. 652, §1, is
32 amended to read:

33 A. ~~Notwithstanding Title 5, section 8072, subsection 11 or any other provision of law~~
34 ~~to the contrary, rules provisionally adopted by the department in accordance with this~~
35 ~~subsection and submitted for legislative review may not be finally adopted by the~~
36 ~~department unless legislation authorizing final adoption of those rules is enacted into~~
37 ~~law.~~

38 This paragraph is repealed on November 1, 2025.

39 **Sec. C-6. 29-A MRSA §2382, sub-§5**, as amended by PL 2019, c. 335, §9, is
40 further amended to read:

41 **5. Long-term permits.** The Secretary of State may grant permits for up to one year
42 for trucks, truck tractors, semitrailers, heavy duty recovery vehicles and Class A special

1 mobile equipment. ~~Notwithstanding Title 5, section 8071, subsection 2, paragraph A, the~~
2 The Secretary of State, in consultation with the Commissioner of Transportation, shall
3 establish the fee schedule by rule. Rules adopted pursuant to this subsection are routine
4 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

5 **Sec. C-7. 38 MRSA §490-NN, sub-§1, ¶B**, as amended by PL 2017, c. 142, §5,
6 is further amended to read:

7 B. In addition to other powers granted to it, the department shall adopt rules to carry
8 out its duties under this article, including, but not limited to, standards for exploration,
9 advanced exploration, construction, operation, closure, post-closure monitoring,
10 reclamation and remediation. Except as otherwise provided, rules adopted under this
11 article are major substantive rules for purposes of Title 5, chapter 375, subchapter 2-A
12 and are subject to section 341-H. ~~Notwithstanding Title 5, section 8072, subsection~~
13 ~~41, or any other~~ provision of law to the contrary, rules provisionally adopted by the
14 department in accordance with this article and submitted for legislative review may not
15 be finally adopted by the department unless legislation authorizing final adoption of
16 those rules is enacted into law.

17 SUMMARY

18 This bill makes the following changes to the laws governing administrative procedures.

19 Part A requires courts and hearing officers to review an agency's interpretation of a
20 statute, rule or subregulatory document without deference to the agency's interpretation. If
21 the legal text is unclear after the court or hearing officer exhausts all customary interpretive
22 tools, the court or hearing officer must default to a reasonable interpretation that limits
23 agency power and maximizes individual liberty.

24 Part B provides that administrative rules expire on June 30th of the 5th year following
25 the year of their filing unless extended by the Legislature. It also requires rules to be
26 approved by the Governor before they can be finally adopted by an agency.

27 Part C changes the definitions of routine technical rules and major substantive rules. It
28 also eliminates the provision allowing an agency to finally adopt major substantive rules
29 that the Legislature failed to act on.