

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

CHAPTER 680

H.P. 1663 - L.D. 2341

AN ACT to Amend Rule-making Provisions in the Maine Administrative Procedure Act.

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

Sec. 1. 5 MRSA §8052, sub-§5, as amended by PL 1981, c. 524, §4, is further amended to read:

5. Written statement adopted. At the time of adoption of any rule, the agency shall adopt a written statement explaining the factual and policy basis for the rule. The agency shall specifically address representative comments and state its rationale for adopting any changes from the proposed rule, or failing to adopt suggested changes.

Sec. 2. 5 MRSA §8052, sub-§7, as amended by PL 1985, c. 506, Pt. A, §2, further amended to read:

7. Adoption of rule. ~~The agency shall, in adopting rules, be consistent with the terms of the proposed rule, except to the extent it determines necessary to address concerns raised in comments and makes specific findings supporting such changes. No rule may become effective unless:~~

A. The agency adopts it within 120 days of the final date by which data, views or arguments may be submitted to the agency for consideration in adopting the rule; and

B. This adopted rule is approved by the Attorney General as to form and legality, as required by section 8056, within 150 days of the final date by which those comments may be submitted.

The final date for comments may be extended if notice of doing so is published before that final date, in the consolidated notice referred to in section 8053.

Sec. 3. 5 MRSA §8053-A, first ¶, as enacted by PL 1985, c. 270, is repealed and the following enacted in its place:

At the time of giving notice of rulemaking under section 8053 or within 10 days following the adoption of an emergency rule, the agency shall provide copies of the proposed rule to the Executive Director of the

Legislative Council. The Executive Director of the Legislative Council or his designee shall refer the proposed rule to the appropriate joint standing committee or committees of the Legislature for review.

Sec. 4. 5 MRSA §8053-A, sub-§1, as enacted by PL 1985, c. 270, is amended to read:

1. Additional information to be submitted. In addition to providing the ~~Legislative Administrative Director~~ Executive Director of the Legislative Council with a sufficient number of copies of a proposed rule for each member of the appropriate committee or committees, the agency shall also provide to the ~~Legislative Administrative Director~~ Executive Director of the Legislative Council sufficient copies of a fact sheet providing:

- A. A citation of the statutory authority for the adoption of the rule;
- B. A concise statement of the principal reasons for the rule;
- C. An analysis of the rule; and
- D. An estimated fiscal impact of the rule.

Sec. 5. 5 MRSA §8057, sub-§1, as amended by PL 1977, c. 694, §35, is further amended to read:

1. Rules; exception. Rules adopted in a manner other than that prescribed by ~~sections~~ section 8052, subsections 1, 2, 3, 4 and 7 and by section 8053 and 8054 shall be void and of no legal effect, provided that insubstantial deviations from the requirements of section 8053 shall not invalidate the rule subsequently adopted. Rules in effect prior to July 1, 1978, shall become void and of no legal effect on July 1, 1979, unless originally adopted after notice published in a newspaper of general circulation in some area of the State and opportunity for hearing or unless adopted in accordance with chapter 375, subchapter II.

Sec. 6. 5 MRSA §8058, sub-§1, as amended by PL 1979, c. 669, §1, is further amended to read:

1. Judicial review. Judicial review of an agency rule, or of an agency's refusal or failure to adopt a rule where the adoption of a rule is required by law, may be had by any person who is aggrieved in an action for declaratory judgment in the Superior Court

conducted pursuant to Title 14, section 5951, et seq., which provisions shall apply to such actions wherever not inconsistent with this section. Insofar as the court finds that a rule was ~~improperly adopted~~ ~~or~~ exceeds the rule-making authority of the agency, or is void under section 8057, subsection 1 or 2, it shall declare the rule invalid. In reviewing any other procedural error alleged, the court may invalidate the rule only if it finds the error to be substantial and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if the error had not occurred. If the court finds that the rule was ~~properly adopted~~ is not procedurally invalid and not in excess of the agency's rule-making authority, its substantive review of that rule shall be to determine whether the rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. The phrase "otherwise not in accordance with law" shall apply only to the review authorized in the preceding sentence and shall not be construed so as to limit or replace in any way section 8003. In the event that the court finds that an agency has failed to adopt a rule as required by law, the court may issue such orders as are necessary and appropriate to remedy such failure.

Sec. 7. 5 MRSA §8059, as enacted by PL 1979, c. 669, §2, is repealed and the following enacted in its place:

§8059. Inconsistent rules

When 2 rules are inconsistent or in conflict with one another, so that compliance with both is impossible, then compliance with either rule shall be deemed to be compliance with the other.

Sec. 8. 5 MRSA §10005 is enacted to read:

§10005. Decision and record

Any licensing decision not involving an adjudicatory proceeding, as defined in section 8002, subsection 1, shall be made in writing and shall be made only on the basis of evidence relevant to the case. When the requested license is denied, or only conditionally approved, the decision shall contain or reflect the agency's reasoning, in a manner sufficient to inform the applicant and the public of the basis for the agency's action.

Sec. 9. 5 MRSA §11006, sub-§1, ¶D, as enacted by PL 1977, c. 551, §3, is repealed and the following enacted in its place:

D. In cases where an adjudicatory proceeding prior to final agency action was not required, and where effective judicial review is precluded by the absence of a reviewable administrative record, the court may either remand for such proceedings as are needed to prepare such a record or conduct a hearing de novo.

Effective July 16, 1986.

CHAPTER 681

H.P. 1691 - L.D. 2382

AN ACT to Establish Municipal Cost Components
for Services to be Rendered in Fiscal
Year 1986-87.

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

Whereas, prompt determination and certification of the municipal cost components in the unorganized territory tax district is necessary to the establishment of a mill rate and the levy of the unorganized territory educational and services tax; 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 enacted by the People of the State of Maine as follows:

Sec. 1. 30 MRSA §5901, sub-§3, as enacted by PL 1983, c. 471, §14, is repealed and the following enacted in its place:

3. Roads and bridges. Construction, repair and maintenance, including snow removal on roads and bridges, except that the county commissioners may not