

MAINE STATE LEGISLATURE

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Bureau of Corporations, Elections, and Commissions

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1989

*Department of
the Secretary of State*

G. William Diamond
Secretary of State

Janet E. Waldron
Assistant Secretary of State

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Deputy Secretary of State

February 22, 1990

Honorable John R. McKernan, Jr.
Governor of Maine
Executive Department
State House Station 1
Augusta, Maine 04333

Dear Governor McKernan,

Pursuant to 5 M.R.S.A. Section 8056-A, the Secretary of State is hereby submitting its report on the progress of the Administrative Procedures Act.

During the year of 1989, there were 392 proposed rule notices (please note that a notice may affect more than one rule) and 596 adopted rules. Of the 596 adopted rules, 253 were emergency rules. Marine Resources filed 206 of those emergency rules for the closing and opening of shores, flats and waters as a result of red tide, bacteria contamination and other potential threats to the public health. The other emergency rules were filed by various and other agencies. During the calendar year of 1989, the cost of publishing the rulemaking notices was \$217,504.32.

At the end of 1989 there were a total of 1,582 rules on file with the Secretary of State. This is an increase of 84 rules over what was on file at the end of 1988.

Public comment on the rulemaking process was solicited by publishing a notice in the Bangor Daily News, Kennebec Journal, Portland Press Herald, Lewiston Daily Sun, and Central Maine Morning Sentinel. As a result of these notices, we received 1 written comment requesting more direction in the conducting of hearings. This comment was more in the form of a complaint based on public hearings which they attended. The letter received stated that at the hearing this gentlemen attended, the board refused to answer questions. This rule involved an increase in fees from \$20 to \$150 and the gentleman was inquiring about the justification for this substantial increase. Consequently, he was not able to get the information he requested. In the past we have also received inquiries from the agencies on how they should conduct their hearings. The Administrative Procedures Act does not give any specific information on how to conduct hearings. To address this problem, the Secretary of State is planning to offer suggestions to guide agencies in conducting hearings. These guidelines will be for informational purpose only and will not be a requirement which agencies must follow.

Comments were also solicited from agencies. One issue raised was that it was cumbersome to address all the comments received during the rulemaking process. Title 5, Section 8052, however, allows that "if the same or similar comments or concerns about a specific issue are expressed by different persons or organizations, the agency may synthesize these comments and concerns into a single comment". This ability to consolidate comments should handle most cases where there are numerous comments. The cases where there are numerous comments each requiring an independent response should be limited.

Another issue raised by agencies was the need to complete a checklist of items that need to be completed and filed with the Secretary of State (Section 8056-A). At present the checklist is filed with the proposed rule, it has been questioned as to whether it would be sufficient to file the checklist only with the adopted rule. The checklist is useful in assessing whether the final rule has been properly adopted.

Other comments referred to updating the rulemaking guide and making it easier to follow. We will attempt to do this when we revise our rulemaking guide. We also plan to include a quick-reference guide which will spell out very briefly on what agencies would have to do to comply with the Administrative Procedures Act.

In response to requests, we now furnish a form to use for the fact sheet, and have amended the Notice of Agency Rulemaking form.

At present an agency proposing a rule shall develop a fact sheet which includes the principal reasons for the rule, the fiscal impact, and an analysis of the rule (section 8057-A). This is to be submitted to the Executive Director of Legislative Council, however, the statutes do not require the agency to provide the fact sheet to the public.

RECOMMENDATIONS:

1. The Administrative Procedures Act should be amended to require agencies to make the fact sheet available to interested parties at least 20 days prior to the hearing. It should also require that the fact sheet be submitted to the Secretary of State when the rule is proposed as well as when it is adopted.
2. The Administrative Procedures Act should be amended to eliminate the requirement that the checklist be filed when the rule is proposed, however it should still be required when the rule is adopted and filed with the Secretary of State.

Sincerely yours,



G. William Diamond
Secretary of State