

MAINE STATE LEGISLATURE

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STATE OF MAINE

OFFICE
OF THE
SECRETARY OF STATE

covers
2010

CHARLES E. SUMMERS, JR.
SECRETARY OF STATE

January 30, 2011

Honorable Paul LePage
Governor's Office
1 State House Station
Augusta, Maine 04333-0002

Dear Governor LePage:

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

During the year 2010, there were 347 proposed rule filings and 650 adopted rule filings. This represents a decrease of 32 proposed rule filings and a decrease of 67 adopted rule filings from 2009. There are fewer proposals than adoptions because of emergency adoption filings, most of which are Marine Resources closed areas. There were 18 provisional major substantive adoptions submitted to the Legislature during 2010. This is a decrease of 9 such filings from 2009. Additionally, during 2010, the cost of publishing the rule-making notices was \$474,120. This was a decrease of \$26,786 from 2009. This cost was spread among the rule-making agencies *pro rata*. At the end of 2010 there were 2,081 current rule chapters on file with the Secretary of State.

The Secretary of State solicited comments on the progress of the Maine Administrative Procedure Act by publishing a notice in five daily Maine newspapers and on the Internet. We received several e-mail replies; copies are attached.

Direct access to the full text of Maine's rule chapters and regulatory agendas may be found on the Department's website at: www.maine.gov/sos/cec/rules.

If you have any questions regarding the Administrative Procedure Act, please contact this office or Julie Flynn, Deputy Secretary of State at 624-7650.

Sincerely yours,

Charles E. Summers, Jr.
Secretary of State

Wisner, Don

To: mepatriot@juno.com
Subject: RE: Public Comments you solicited RE: Maine's APA

Dear Mr. Martin:

Thank you for your comment! It will be part of the annual report.

All the best,

Don Wisner, Ph.D. - Rules
Secretary of State - CEC
101 State House Station
Augusta, ME 04333
(207) 624-7647

-----Original Message-----

From: mepatriot@juno.com [mailto:mepatriot@juno.com]
Sent: Tuesday, January 18, 2011 9:25 AM
To: Wisner, Don
Subject: Public Comments you solicited RE: Maine's APA

Dear Mr. Wisner,

Pursuant to the "Request for Comment" included with the Governor's recent publication under "notice of rule making" in Maine's daily papers, please accept for consideration the following, and advise upon receipt, RE: review of Maine's Administrative Procedures Act (APA),

As the The Maine Administrative Procedure Act found in Title 5, Part 18, Chapter 375 of the Maine Revised Statutes Annotated is clearly extra-Constitutional, and as the people of Maine have not had a voice in several decades as to whether bureaucrats ought to continue to have the right to make even CRIMINAL law through agency "rule making" beyond the purview of the legislature, please urge that the entire MAPA be repealed; or, at a bare minimum, please supply your good offices toward an effort to allow the people of Maine to vote in referendum on whether to keep the MAPA at all.

Correspondingly, The Federal APA of 1946 is also a New Deal leftover, that is prima facie extra-Constitutional as well; and, Maine has every right to nullify the Federal APA as it applies to the existence or maintenance of a Maine APA.

All the best
and
For the Republic,

Steve Martin
Host, The Aroostook Watchmen Radio Program WXME-AM 780, Monticello, Maine
207-532-3635
AroostookWatchmen.com
mepatriot@juno.com

Wismer, Don

From: Burt & Pat Truman [trumbu@roadrunner.com]
Sent: Wednesday, January 26, 2011 7:14 PM
To: Wismer, Don
Subject: Comment on the Maine Administrative Procedures Act (APA)

Dear Mr. Wismer,

This state is being regulated beyond what is necessary for the common good! And the ones who propose these rules and regulations don't seem to be accountable to anyone. The APA needs to be revoked.

Sincerely,

Pat Truman
Hallowell

1/27/2011

Wismer, Don

From: Michelle Truman [michelletmail@hotmail.com]
Sent: Wednesday, January 26, 2011 8:15 PM
To: Wismer, Don
Subject: Comments on the Maine APA

Dear Mr. Wismer,

Once again, I am pleased to offer my comments on the Maine Administrative Procedures Act (APA).

My recommendation is to REPEAL the Maine APA forthwith, because it is inherently unconstitutional (*see notes below*).

I am encouraged by our new Governor's desire to cut down on the regulations which strangle our State of Maine. Repealing the Maine APA would be a good start.

Sincerely,
 Michelle Truman
 Hallowell

#

[Comments submitted in 2009, which are as relevant now as previously - MT]:

Ask yourselves: why should someone -- a **non-elected**, agency worker -- have the authority to write a "rule" which has the force of law, without first passing through the legislative process? Consider the following:

Some 30 years ago there was a law stating all Maine law be passed written in a clear and simple style so the average citizen could understand it without having it interpreted. This law was expunged with seemingly no opposition! Unfortunately no succeeding legislature has had the wisdom or grace, or felt it their responsibility, to make the laws they pass easy for the citizens to understand, yet are told "Ignorance of the law is no excuse!"

Important to note:

From the Constitution of the State of Maine:

Article III. Distribution of Powers.

Section 2. ***No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted. [my emphasis added]***

From the U.S. Constitution:

Section 8. The ***Congress*** shall have power To make Rules for the Government. ***[my emphasis added]***

The federal law [*national version of APA*] was enacted in 1946 and a number if state legislatures have since followed suit, thus sloughing off the details of the laws they pass to those *non-elected, agency workers who may*

1/27/2011

have built-in conflicts of interest.

It may be the need to reduce all changes to computers not readily accessed by John Q. Public, but the Maine legislature is to be congratulated by re-evaluating the APA as one of the worst laws on its books! As long as changes in laws affecting Maine people can be done so easily, with scant notice, and certainly without legislative debate, no Maine citizen is safe from poor and unwise administrative rules or regulations with the force of law. We elected people to make our laws fewer and simple to understand. It is unfair to have the same persons formulate and apply those laws!

Many thanks to Mrs. Bettina Dobbs, who helped to provide the above information.

Wismer, Don

From: Edward Libby [coltted@yahoo.com]
Sent: Thursday, January 27, 2011 5:35 AM
To: Wismer, Don
Subject: Requested comment

Sir,

From the Constitution of the State of Maine:

Article III. Distribution of Powers.

Section 2. *No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted. [my emphasis added]*

The Legislature alone should be making rules and or laws, not a non-elected individual or agency.

Thank you,

Ed Libby

West Gardiner ME

1/27/2011

Wismer, Don

From: Bob Acheson [racheson1@roadrunner.com]
Sent: Thursday, January 27, 2011 2:33 PM
To: Wismer, Don
Cc: michelletmail@hotmail.com
Subject: Maine APA Request for Citizen Input

Dear Mr. Wismer,

01/27/11

As a Maine citizen, I would like to comment on your APA issue of making Maine Laws.

First, we are told that "Ignorance of the law is no excuse" when we stand in court. However, many laws are written I hear in such an incomprehensible way that many citizens do no, can not, understand them.

Second, I am against unauthorized agency or government worker have the right to make rules that are given the force of law - WITHOUT THE LEGISLATURE'S APPROVAL OR PASSING OF AN "OFFICIAL" (authorized) LAW?

Both of these factors in Maine law seem to me to be extremely eggregious and down right illegal.

I sincerely hope you will take my comments into consideration when making your firther deliberations.

Sincerely,
Robert Bruce Acheson
Dixfield, ME 04224
207-562-7500

APA RULE CHAPTERS IN EFFECT AT THE END OF 2010

| Agency Umbrella Number | Agency | Sub-total | New chapters after April 8 | Repeals after April 8 | Final total |
|------------------------|--|-------------|----------------------------|-----------------------|-------------|
| 01 | Agriculture | 189 | 6 | 1 | 194 |
| 02 | Professional and Financial Regulation | 544 | 1 | 9 | 536 |
| 03 | Corrections | 6 | | | 6 |
| 04 | Conservation | 39 | | | 39 |
| 05 | Education | 55 | | 1 | 54 |
| 06 | Environmental Protection | 210 | 1 | 1 | 210 |
| 07 | Executive | 16 | | | 16 |
| 09 | Inland Fisheries and Wildlife | 22 | | | 22 |
| 10, 14 | Health and Human Services | 211 | 4 | 2 | 213 |
| 12 | Labor | 71 | 1 | | 72 |
| 13 | Marine Resources | 55 | 1 | | 56 |
| 15 | Defense, Veterans and Emergency Management | 6 | | | 6 |
| 16 | Public Safety | 111 | 6 | | 117 |
| 17 | Transportation | 30 | | | 30 |
| 18 | Administrative and Financial Services | 71 | 3 | | 74 |
| 19 | Economic and Community Development | 30 | 1 | | 31 |
| 26 | Attorney General | 16 | | | 16 |
| 28 | Treasurer | 2 | | | 2 |
| 29 | Secretary of State | 62 | 2 | 1 | 63 |
| 65 | Public Utilities Commission | 98 | 3 | 3 | 98 |
| 90 | Independent Agencies | 209 | 19 | 2 | 226 |
| Total | | 2053 | 48 | 20 | 2081 |

*Don Wismer
January 26, 2011*

| AD RUN | APA | AD PMT DUE | <i>paid in bold</i> | | |
|------------|-----------|--------------|---------------------|-------------|--------------|
| DATE | BANGOR | CTL ME NEWSP | PORTLAND | SUN JOURNAL | WEEKLY TOTAL |
| 1/6/2010 | 2936.95 | 4,020.98 | 2994.22 | 1643.88 | 11596.03 |
| 1/13/2010 | 1875.40 | 2,412.59 | 1912.87 | 645.75 | 6846.61 |
| 1/20/2010 | 1521.55 | 1,953.05 | 1496.96 | 553.50 | 5525.06 |
| 1/27/2010 | 3680.04 | 4,940.06 | 3287.82 | 1291.50 | 13199.42 |
| 2/3/2010 | 1167.70 | 1,787.10 | 1095.75 | 461.25 | 4511.80 |
| 2/10/2010 | 2689.26 | 3,216.78 | 2113.50 | 861.00 | 8880.54 |
| 2/17/2010 | 2877.98 | 3,216.78 | 2348.36 | 922.50 | 9365.62 |
| 2/24/2010 | 1627.71 | 2,233.88 | 1408.90 | 538.13 | 5808.62 |
| 3/3/2010 | 2335.41 | 2,859.36 | 2035.21 | 722.63 | 7952.61 |
| 3/10/2010 | 4140.04 | 4,940.06 | 3287.82 | 1783.50 | 14151.42 |
| 3/17/2010 | 2123.10 | 3,331.67 | 2348.36 | 891.75 | 8694.88 |
| 3/24/2010 | 1857.71 | 2,987.01 | 1800.34 | 784.13 | 7429.19 |
| 3/31/2010 | 1981.56 | 3,216.78 | 2348.36 | 907.13 | 8453.83 |
| 4/7/2010 | 1946.17 | 3,216.78 | 2191.78 | 830.25 | 8184.98 |
| 4/14/2010 | 3927.73 | 4,940.06 | 4383.85 | 1906.50 | 15158.14 |
| 4/21/2010 | 2547.72 | 3,791.21 | 2739.8 | 1076.25 | 10154.98 |
| 4/28/2010 | 1486.17 | 2,757.24 | 1565.48 | 630.38 | 6439.27 |
| 5/5/2010 | 2335.41 | 3,561.44 | 2504.94 | 968.63 | 9370.42 |
| 5/12/2010 | 2406.18 | 3,561.44 | 2583.22 | 1014.75 | 9565.59 |
| 5/19/2010 | 2689.26 | 4,020.98 | 2818.09 | 1153.13 | 10681.46 |
| 5/26/2010 | 2335.41 | 3,446.55 | 2426.65 | 937.88 | 9146.49 |
| 6/2/2010 | 3467.73 | 4,135.86 | 3052.95 | 1168.50 | 11825.04 |
| 6/9/2010 | 2146.69 | 2,987.01 | 1956.92 | 753.38 | 7844.00 |
| 6/16/2010 | 2123.10 | 2,987.01 | 2035.21 | 784.13 | 7929.45 |
| 6/23/2010 | 1380.01 | 2,144.52 | 1408.90 | 522.75 | 5456.18 |
| 6/30/2010 | 4458.51 | 4,940.06 | 3835.83 | 1921.87 | 15156.27 |
| 7/7/2010 | 4033.89 | 4,940.06 | 3835.83 | 1814.25 | 14624.03 |
| 7/14/2010 | 3503.11 | 4,940.06 | 3052.95 | 1660.50 | 13156.62 |
| 7/21/2010 | 1698.48 | 2,987.01 | 2035.21 | 799.50 | 7520.20 |
| 7/28/2010 | 1769.25 | 3,676.32 | 2583.22 | 999.38 | 9028.17 |
| 8/4/2010 | 1663.09 | 2,757.24 | 1643.77 | 676.50 | 6740.60 |
| 8/11/2010 | 1769.25 | 2,757.24 | 1722.06 | 676.50 | 6925.05 |
| 8/18/2010 | 884.62 | 1,493.51 | 834.79 | 369.00 | 3581.92 |
| 8/25/2010 | 3963.12 | 4,940.06 | 3653.16 | 1747.73 | 14304.07 |
| 9/1/2010 | 3963.12 | 4,940.06 | 3561.83 | 1506.75 | 13971.76 |
| 9/8/2010 | 1733.86 | 2,412.59 | 1,679.00 | 676.50 | 6501.95 |
| 9/15/2010 | 1981.56 | 2,872.13 | 1908.00 | 768.75 | 7530.44 |
| 9/22/2010 | 1132.32 | 1,684.98 | 813.92 | 415.13 | 4046.35 |
| 9/29/2010 | 3161.06 | 4,020.98 | 2823.97 | 1137.75 | 11143.76 |
| 10/6/2010 | 4458.51 | 4,940.06 | 3205.62 | 1814.25 | 14418.44 |
| 10/13/2010 | 3078.49 | 4,940.06 | 3205.62 | 1414.50 | 12638.67 |
| 10/20/2010 | 1132.32 | 2,527.47 | 1526.34 | 599.63 | 5785.76 |
| 10/27/2010 | 2335.41 | 3,676.32 | 2518.64 | 984.00 | 9514.37 |
| 11/3/2010 | 2618.49 | 3,676.32 | 2365.98 | 1045.50 | 9706.29 |
| 11/10/2010 | 2972.34 | 3,676.32 | 2518.64 | 1122.38 | 10289.68 |
| 11/17/2010 | 2476.95 | 3,676.32 | 2518.64 | 922.50 | 9594.41 |
| 11/24/2010 | 2441.56 | 3,676.32 | 2518.64 | 922.50 | 9559.02 |
| 12/1/2010 | 1840.02 | 2,872.13 | 1,679.00 | 722.63 | 7113.78 |
| 12/8/2010 | 1486.17 | 2,297.70 | 1450.01 | 615.00 | 5848.88 |
| 12/15/2010 | 2264.64 | 3,446.55 | 1984.33 | 891.75 | 8587.27 |
| 12/22/2010 | 1450.78 | 2,297.70 | 1373.68 | 553.50 | 5675.66 |
| 12/29/2010 | 1910.79 | 2,688.12 | 1679.00 | 707.25 | 6985.16 |
| | 125787.70 | 176419.89 | 120673.94 | 51238.68 | 474120.21 |

\$ 500,906 2009
 474,120 2010

 26,786

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