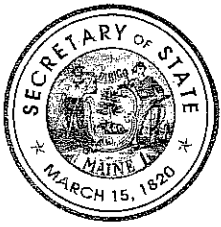


# MAINE STATE LEGISLATURE

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STATE OF MAINE

OFFICE  
OF THE  
SECRETARY OF STATE

covers  
2011

CHARLES E. SUMMERS, JR.  
SECRETARY OF STATE

January 31, 2012

The Honorable Paul R. LePage  
Governor of Maine  
1 State House Station  
Augusta, Maine 04333-0001

Dear Governor LePage,

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

During the year 2011, there were 270 proposed rule filings and 502 adopted rule filings. This represents a decrease of 77 proposed rule filings and a decrease of 148 adopted rule filings from 2010. 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 2011, the same number as 2010. At the end of 2011 there were 2,112 current rule chapters on file with the Secretary of State.

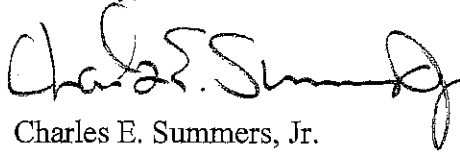
Additionally, during 2011, the cost of publishing the rule-making notices was \$242,259. This was a decrease of \$231,861 (49%) from 2010. This cost was spread among the rule-making agencies *pro rata*. Pursuant to Chapter 380 of the Public Laws of 2011, notice of the adoption of rules was no longer published in the newspaper after July 6, 2011. While the lower number of overall rule filings contributed to this reduction in advertising costs, the complete elimination of the requirement to publish adoptions is likely the most significant factor in this substantial decrease. Adoption notices are still included on the Bureau's (CEC) web site notice.

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 one comment from Michael J. Dowd, President of the Maine Press Association – it is 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](http://www.maine.gov/sos/cec/rules).

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

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Summers, Jr.", with a stylized flourish at the end.

Charles E. Summers, Jr.  
Secretary of State

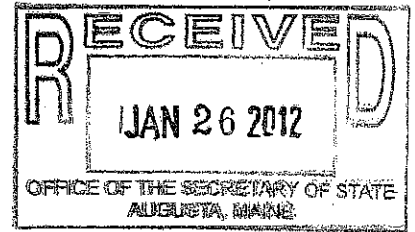


# MPA Maine Press Association

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January 26, 2012

Mr. Don Wismer  
APA Coordinator  
Department of Secretary of State  
101 State House Station  
Augusta, ME 04333



**Re: Comments on the Maine Administrative Procedure Act**

Dear Mr. Wismer:

Pursuant to Title 5, section 8056-A of the Maine Revised Statutes, the Maine Press Association provides these comments on the Maine Administrative Procedure Act ("APA") to the Secretary of State.

The MPA, representing the state's newspaper industry, consists of more than 40 weekly and daily papers across the state. We employ over 2,000 Mainers, pay over \$70 million in annual wages, and assist local businesses in making hundreds of millions of dollars in sales each and every year. Additionally, the industry invested nearly \$7 million dollars recently in new buildings, vehicles, and equipment and newspapers, paying approximately \$7.5 million in State and local taxes. Total annual sales of the industry, including daily and weekly newspapers, was over \$154 million dollars last year.

## **1. Publishing Public Notices is an Integral Element of the APA.**

Public notices are an important function of government and an integral element of the APA, and publishing them is a service that daily newspapers historically have provided to government effectively and at a reasonable cost. The term, public notice, means a government entity is actively reaching out to the public to impart information that would otherwise require the public to approach government to receive.

## **2. Publishing Public Notices in Maine's Newspapers Remains the Most Effective Medium for Delivering This Information and Achieving Transparency.**

Maine's newspapers continue to be the most effective and efficient means of informing Maine people, as the newspaper industry remains economically and socially vibrant. The facts are that newspapers are read in print or online by more than 71% of the adult population, according to Scarborough Research in a 2010 survey of more than 210,000 adults. Additionally, newspaper websites drew 62% of all adult internet users, based on an analysis done by comScore, Inc, in the fourth quarter of 2010.

In Maine, the print versions of the seven daily newspapers reach nearly one-third of the total population, or 410,292 readers on a daily basis. On the weekend, Maine newspapers reach 40% of total population, or 521,620 readers. The Super Bowl has long been considered the Mecca for the advertising world, reaching the largest broadcast audience each year. During the most recent Super

Bowl (2011), 111 million people watched. That equals 35.8% of total population. Maine newspapers reach 4.2% more people in Maine every weekend. While we have a smaller audience than we did five or ten years ago, newspapers remain the dominant medium to communicate to the residents of Maine.

These figures do not account for Maine's exceptional crop of weekly newspapers which serve readers in every city, town and village. Once those numbers are combined, the conclusion is clear: no other medium in this state has the proven reach like a Maine newspaper. This is why government notices have been published in newspapers for decades – doing so remains the easiest, most cost-effective method for government entities to satisfy its legal requirements to notify the public of its activity. This remains just as true today as ever.

In an effort to improve our service to the State of Maine and local municipalities, the daily newspapers established a public notice website nearly six years ago to increase access and readership of public notices. The site ([www.me.mypublicnotices.com](http://www.me.mypublicnotices.com)) carries all the public notice ads that appeared in the daily newspapers. These include all State and State agency notices, municipal notices, foreclosure notices, etc., that are published in any one Maine's newspapers. Based on information obtained from the State CIO, the newspaper public notice site generates two to three times the traffic that is received for the public notice area of the maine.gov website. Our site is the premier website for anyone seeking access to all forms of public notice.

Additionally, this site will soon be expanded to include all the public notice advertising that is published in key weekly newspapers in the State. Adding in the weeklies will greatly enhance the offering of notices and increase the volume of traffic through the promotion of these new entrants.

Recent efforts by certain members of the Legislature to move away from publishing public notice in newspapers has the potential of damaging the transparency of government and hurting private industry. Government will still have to publish notices, whether in newspapers or not. Moving notices away from newspapers will likely cost jobs, as our industry is recovering from the recession after years of cuts. This is not a subsidy for newspapers; it is government investing in being as transparent as possible. Changing delivery methods will require a lengthy and costly marketing campaign paid for by the state or municipality to adequately inform the public where to look for legal notices.

There is no reason the government should be in the publication business. There are archiving needs and public relations that go along with publishing public notices. Newspapers, as private businesses and watchdogs, do this easily and have done so for many decades. Why should government step in, when the private sector is already providing the service? Traditional newspapers are a better delivery model than government websites and 3rd-Class mailers because citizens already know notices are published there, and mailers can easily be discarded without reading. Newspapers have unparalleled credibility as reliable sources of information built up over decades, and daily newspapers have verifiable circulation and web traffic figures.

### **3. Maine's Newspapers Desire a Strong and Productive Working Relationship with the State to Address its Needs Related to Noticing the Public in the Most Effective and Efficient Manner Possible.**

The MPA desires a strong working relationship with the state to address its needs related to noticing the public and to improve its service of providing public notices. Recently, several newspapers have published promotion ads encouraging readership of public notice ads. Since May, we estimate that as

much as the equivalent of 8 full pages have run promoting the readership of public notice ads. The Bangor Daily News is also reviewing the design of its public notice and rule-making advertisement model with a goal of improving readability. Specifically, the Bangor Daily News is converting to a new front end system that will hopefully increase the print size of public notice ads (with no increase in cost) to assist in making the notices easier to read.

Importantly, Maine newspapers have been responsive to the concerns and need to lower expenses. In 2008, newspapers negotiated and agreed to a decreasing rate schedule for State public notice advertising. The negotiated rates were then extended to all State and State agency public notice advertising. These reductions will run from 2008-2012 and will deliver rate reductions of 25% to 35%, depending on the newspaper company, on all advertising.

Thank you for the opportunity to provide comments on the APA, and specifically on the public notice provisions of the APA. The MPA respectfully submits that Maine's newspapers remain the most effective means of publishing public notice and achieving transparency in state government. Finally, the MPA strongly desires to maintain a strong and productive relationship with the State to address its needs for finding the most effective and economical solutions to providing public notice of the events of state government to its citizens.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Dowd". The signature is fluid and cursive, with a large initial "M" and "J".

Michael J. Dowd,  
Editor-in-Chief, Bangor Daily News  
President, Maine Press Association

**Wismer, Don**

**To:** Walker, Daniel W.

**Subject:** RE: Comments on Maine Administrative Procedure Act

Thank you for the comments, Mr. Walker!

All the best,

Don

Don Wismer, Ph.D.  
APA Coordinator  
Bureau of Corporations, Elections and Commissions  
Department of Secretary of State  
101 State House Station  
Cross Office Building, 111 Sewall Street, 4th Floor  
Augusta, Maine 04333

e-mail: [don.wismer@maine.gov](mailto:don.wismer@maine.gov)  
phone: (207) 624-7647

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**From:** Walker, Daniel W. [mailto:[DWalker@preti.com](mailto:DWalker@preti.com)]  
**Sent:** Thursday, January 26, 2012 3:19 PM  
**To:** Wismer, Don  
**Subject:** Comments on Maine Administrative Procedure Act

Attached please find comments of the Maine Press Association regarding the Maine Administrative Procedure Act. An original of this letter will be hand delivered to your office today.

**Roberta York Palmer | Legal Assistant to Bruce C. Gerrity and Daniel W. Walker  
PretiFlaherty**  
45 Memorial Circle | P.O. Box 1058 | Augusta, ME 04332-1058  
T 207.791.3193 | F 207.623.2914  
[rpalmer@preti.com](mailto:rpalmer@preti.com) | [www.preti.com](http://www.preti.com)

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1/27/2012

**9. Certification of published rules.** The Secretary of State may certify that a publication of the codified rules and any supplements or replacement volumes to that publication are a correct transcript of the text of the original rules.

A. Certified publications must contain a printed certificate of the Secretary of State stating that the publication is the official copy. A facsimile of the signature of the Secretary of State imprinted by or at the direction of the Secretary of State has the same validity as a written signature of the Secretary of State. [1991, c. 554, §2 (NEW) .]

B. A publication of the rules certified by the Secretary of State constitutes prima facie evidence of the rules. [1991, c. 554, §2 (NEW) .]

C. Any publication of a rule or rules that is not certified by the Secretary of State:

(1) May neither state nor imply that the publication is an official copy of the rules; and

(2) Must state in a conspicuous location where the Secretary of State's certified copy is located. [1991, c. 554, §2 (NEW) .]

[ 1991, c. 554, §2 (NEW) .]

**10. Minor errors.** The Secretary of State may correct minor, nonsubstantive errors in spelling and format in proposed or adopted rules if the agency is notified.

[ 1993, c. 362, §6 (NEW) .]

#### SECTION HISTORY

1977, c. 551, §3 (NEW). 1979, c. 425, §§8,9 (AMD). 1981, c. 524, §§11-13 (AMD). 1985, c. 39, §3 (AMD). 1991, c. 554, §§1,2 (AMD). 1993, c. 362, §§4-6 (AMD). 1995, c. 373, §§6,7 (AMD). 1995, c. 537, §6 (AMD). 1999, c. 261, §1 (AMD). 2011, c. 380, Pt. NNN, §2 (AMD) .

## 5 §8056-A. TECHNICAL ASSISTANCE; ANNUAL REPORT

**1. Checklist.** The Secretary of State shall establish and implement a checklist that must be completed by agencies and attached to adopted rules filed with the Secretary of State after December 31, 1989. The checklist must include the timing of filing and notices as well as other procedural requirements of this subchapter.

[ 1991, c. 554, §3 (AMD) .]

**2. Technical assistance.** The Secretary of State shall develop uniform drafting instructions for use by all agencies that propose rules under this subchapter and shall compile those instructions in a drafting manual. In addition, the Secretary of State shall provide assistance to any agency regarding the form for drafting of rules and supporting materials and the other requirements of this subchapter.

[ 1991, c. 554, §3 (AMD) .]

**3. Report.** The Secretary of State shall report to the Governor and the joint standing committee of the Legislature having jurisdiction over state and local government prior to February 1st of each year with respect to rule-making activities for the prior year. The report must include statistical information on agency rule-making activities, agency experience with procedural requirements of this subchapter, an evaluation of the codification process, the impact of the electronic text file data base on state agencies and users of the rules and recommendations for improvements to the rule-making process. In preparing the report, the Secretary of State shall solicit comments on this subchapter from agencies and their legal counsels, the Executive Director of the Legislative Council and the public.

[ 1991, c. 554, §3 (AMD) .]

#### SECTION HISTORY