

MAINE STATE LEGISLATURE

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MATTHEW DUNLAP
SECRETARY OF STATE

STATE OF MAINE
OFFICE
OF THE
SECRETARY OF STATE

January 31, 2017

Honorable Paul Davis, Senate Chair
Honorable Roland Martin, House Chair
Members of the Joint Standing Committee on State and Local Government
3 State House Station
Augusta, Maine 04333-0003

Dear Senator Davis, Representative Martin and Members of the Joint Standing Committee on State and Local Government,

Pursuant to 5 MRS §8056-A, herein is the Secretary of State's report on the progress of the Maine Administrative Procedure Act (APA).

During the year 2016, there were 205 proposed rule filings and 232 adopted rule filings. This represents a decrease of 43 proposed rule filings and a decrease of 28 adopted rule filings from 2015. There are fewer proposals than adoptions primarily because of emergency adoption filings, which do not require the filing of a proposal prior to adoption. There were 11 provisional major substantive rule adoptions submitted by agencies to the Secretary of State and the Legislature during 2016, which is 5 fewer than 2015. During 2016, 21 new rule chapters were adopted, and 6 were repealed. At the end of 2016 there were 2,061 current rule chapters in effect and on file with the Secretary of State under the APA, 15 more than 2015.

Additionally during 2016, the cost of publishing the Wednesday rule-making proposal notices in five daily newspapers was \$191,837. This was a decrease of \$16,215 from 2015. 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 is no longer published in the newspapers. Weekly adoption notices are included on the Bureau's (CEC) website along with the rule-making proposal notices.

The Secretary of State solicited comments on the progress of the Maine APA by publishing a notice in five daily newspapers and on the Internet, and by e-mail to state agencies. Two comments were received and 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 me or Julie Flynn, Deputy Secretary of State at 624-7650.

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke that curves upwards at the end. The signature is positioned above the printed name and title.

Matthew Dunlap
Secretary of State

Wisner, Don

From: Michelle Truman <MichelleTmail@hotmail.com>
Sent: Tuesday, January 24, 2017 1:06 AM
To: Wisner, Don
Subject: Comments on Maine APA

January 23, 2017

Dear Mr. Wisner,

I welcome the opportunity to comment on the Maine Administrative Procedures Act (APA).

Those who passed the Maine APA in 1978 were probably thinking that it would prevent what they considered a lot of needless legislative wheel-spinning and allow them to concentrate on more weighty legislative matters. I don't think that has happened, nor do I think that the Maine APA has been very helpful to the citizens of Maine.

The sheer number of regulations and rules generated through the Maine APA since 1978 is positively staggering. Worse still, when regulations and rules conflict with one another – or with those of other state agencies – *more* rules and regulations are required to “clarify” things!

The effect on Maine citizens and businesses is suffocating.

Rule-making is **not** law-making. And yet the Maine APA has elevated regulations and rules *to have the force of law*. This is a clear muddying of the separation of powers, as well as an abdication of legislative responsibility – i.e., legislative power transferred through the Maine APA to *non-elected* agencies of the executive branch.

To quote the late Mrs. Bettina Dobbs from her book *Gems from the GEM Years*: “We must question the lack of true representation...

[F]or purposes of expediency, the legislative powers of our 186 duly elected lawmakers have been handed over to a single agency member or, in some cases, more than one non-elected agency member [emphasis in original]!”

Although I applaud efforts to improve and make Maine state government more efficient, I think we can do better than focusing merely on different ways to adopt, amend, or appeal any rule. Therefore, not only because of its questionable constitutionality, but also because of its detrimental effects on the freedom and wellbeing of Maine citizens, I suggest that the Maine

APA be repealed – in its entirety. The next best thing would be to rescind the rule-making portion. Less government is better government.

Sincerely,

Michelle Truman
Hallowell

Wismer, Don

From: Peabody, Timothy E
Sent: Wednesday, January 25, 2017 9:22 AM
To: Wismer, Don
Cc: Woodcock, Chandler; Orff, Becky
Subject: Comment on the Maine APA

The Department of Inland Fisheries and Wildlife would like to comment on Paragraph (5) of Section 8053. In fiscal year 2016 the department reimbursed the Secretary of State approximately \$21,000 in costs for advertising for the APA rulemaking process. Today the public receives information from multiple media platforms. The department feels that the requirement to “designate certain newspapers” under paragraph (B) needs to be reviewed. We feel an alternative method for public notice that is less of a fiscal burden on departments should be pursued.

M.R.S. 5 § 8053

5. Publication. Using the format of notice pursuant to subsection 7, the Secretary of State shall:

A. Arrange for the weekly publication of a consolidated notice of rule making of all state agencies, which shall also include a brief explanation to assist the public in participating in the rule-making process. Notice of each rule-making proceeding shall be published once 17 to 24 days prior to the public hearing on the proposed rule or at least 30 days prior to the last date on which views and arguments may be submitted to the agency for consideration if no public hearing is scheduled; [1981, c. 698, §12 (RPR).]

B. Designate certain newspapers, which together have general circulation throughout the State, as papers of record for the purpose of publishing notice under paragraph A. Notice of proposed rules affecting only a particular locality or region need only be published in the designated newspapers having general circulation in the area affected; [2009, c. 256, §2 (AMD).]

C. Designate one day as rules day for publication of notices on rulemaking as set forth in this subsection; and [1991, c. 837, Pt. A, §11 (AMD).]

D. Be reimbursed for the cost of publication of rule-making notice by the agencies proposing the rulemaking. The total costs of each consolidated publication will be prorated by the Secretary of State among all agencies submitting notice for a particular week. [1979, c. 425, §5 (NEW).] [2009, c. 256, §2 (AMD) .]

Timothy Peabody
Deputy Commissioner
Department of Inland Fisheries and Wildlife
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