

## 131st MAINE LEGISLATURE

## **FIRST SPECIAL SESSION-2023**

**Legislative Document** 

No. 1840

H.P. 1172

House of Representatives, April 27, 2023

An Act to Reform the State's Administrative and Rule-making Procedures

Reference to the Committee on State and Local Government suggested and ordered printed.

R(+ B. Hunt ROBERT B. HUNT

Clerk

Presented by Representative ANDREWS of Paris.

1	Be it enacted by the People of the State of Maine as follows:
2	PART A
3	Sec. A-1. 5 MRSA §8058, sub-§3 is enacted to read:
4 5 6 7 8 9	3. De novo review. In interpreting a state statute, rule or subregulatory document, a state court or an officer hearing an administrative action may not defer to an agency's interpretation of it and shall instead interpret its meaning and effect de novo. In actions brought by or against agencies, after applying all customary tools of interpretation, the court or hearing officer shall resolve any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.
10 11	<b>Sec. A-2. 5 MRSA §9061, first</b> $\P$ , as enacted by PL 1977, c. 551, §3, is amended to read:
12 13 14 15 16 17 18 19 20 21 22 23 24	Every agency decision made at the conclusion of an adjudicatory proceeding shall must be in writing or stated in the record, and shall must include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision. A copy of the decision shall must be delivered or promptly mailed to each party to the proceeding or his the party's representative of record. Written notice of the party's rights to review or appeal of the decision within the agency or review of the decision by the courts, as the case may be, and of the action required and the time within which such action must be taken in order to exercise the right of review or appeal, shall must be given to each party with the decision. In any review or appeal of a decision to a court of this State, the court may not defer to an agency's interpretation of a statute, rule or subregulatory document and shall instead interpret its meaning and effect de novo. After applying all customary tools of interpretation, the court shall resolve any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.
25 26	<b>Sec. A-3. 5 MRSA §11007, sub-§3,</b> as amended by PL 2021, c. 277, §10, is further amended to read:
27 28 29 30 31 32 33	<b>3. Judgment.</b> The court may not substitute its judgment for that of the agency on questions of fact, except that, with respect to a timely appeal by an individual of a denial of a disability determination by a hearing officer pursuant to sections 17106-A and 17106-B, the court shall review the matter de novo. The court shall review de novo an agency's interpretation of a statute, rule or subregulatory document. After applying all customary tools of interpretation, the court shall resolve any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.
34	PART B
35	Sec. B-1. 5 MRSA §8065 is enacted to read:
36	§8065. Expiration of rules
37 38 39 40 41	1. Expiration of rules. Notwithstanding any provision of law to the contrary, unless legislation is enacted to continue a rule to a date certain or indefinitely, a finally adopted rule filed with the Secretary of State expires on June 30th of the 5th year following the year of its filing. The postponement of the expiration of a rule does not constitute legislative approval of the rule and is not admissible in any court as evidence of legislative intent.
42	2. Exceptions. This section does not apply to:

<u>1</u>	A. Emergency rules adopted pursuant to section 8054; or
Ţ	B. Rules adopted to conform to or implement federal law.
\$	Sec. B-2. 5 MRSA §8066 is enacted to read:
<u>§806</u>	66. Gubernatorial approval of proposed rules
Gove notic recei	The adoption or amendment of a rule by an agency is subject to the approval of the ernor. An agency may not submit for publication pursuant to section 8053 any required to e of the adoption of a new rule or the amendment of an existing rule without first awing from the Governor and including a copy of the written approval of the adopted mended rule by the Governor.
	PART C
to re	Sec. C-1. 5 MRSA §8071, sub-§2, as enacted by PL 1995, c. 463, §2, is amended ad:
	<b>2. Categories of rules.</b> There are 2 categories of rules authorized for adoption after ary 1, 1996.
‡ 3 •	A. Routine technical rules are procedural rules that establish standards of practice or procedure for the conduct of business with or before an agency and any other rules that are not major substantive rules as defined in paragraph B. Routine technical rules include, but are not limited to, forms prescribed by an agency; they do not include fees established by an agency except fees established or amended by agency rule that are below a cap or within a range established by statute.
	B. Major substantive rules are rules, including emergency rules, that, in the judgment of the Legislature, will result in or are likely to result in:
	(1) Require the exercise of significant agency discretion or interpretation in drafting; or
	(2) Because of their subject matter or anticipated impact, are reasonably expected to result in a significant increase in the cost of doing business, a significant reduction in property values, the loss or significant reduction of government benefits or services, the imposition of state mandates on units of local government as defined in the Constitution of Maine, Article IX, Section 21, or other serious burdens on the public or units of local government.
	(3) An annual effect on the economy of \$50,000,000 or more;
	(4) Significant adverse effects on competition, employment, investment, productivity or innovation, including significant adverse effects on individual industries or regions; or
	(5) Significant changes in social and cultural relations among citizens, including significant impacts on religious, ethnic, racial or gender populations.
	Sec. C-2. 5 MRSA §8072, sub-§8, as amended by PL 2011, c. 244, §8, is further nded to read:
of a	<b>3. Final adoption; effective date.</b> Unless otherwise provided by law, final adoption rule or part of a rule by an agency must occur within 60 days of the effective date of egislation approving that rule or part of that rule or of the adjournment of the session

in which the Legislature failed to act on the rule or part of the rule as specified in subsection 14. Finally adopted rules must be filed with the Secretary of State as provided in section 8056, subsection 1, paragraph B and notice must be published as provided in section 8056, subsection 1, paragraph D. Except as otherwise specified by law, the rules become effective 30 days after filing with the Secretary of State or at a later date specified by the agency.

- **Sec. C-3. 5 MRSA §8072, sub-§11,** as enacted by PL 2011, c. 244, §10, is amended to read:
- 11. Prohibited final adoption. A provisionally adopted rule or part of a provisionally adopted rule may not be finally adopted by an agency unless:
  - A. Legislation authorizing adoption of the rule or part of the rule is enacted into law; or.
  - B. The agency submits the rule or part of the rule in accordance with this section during the legislative rule acceptance period and the Legislature fails to act on the rule or part of the rule.

For purposes of this subsection, the Legislature fails to act on a rule or part of a rule if the Legislature fails to enact legislation authorizing adoption or disapproving adoption of the rule or part of the rule during the legislative review session or during any subsequent session to which a legislative instrument expressly providing for approval or disapproval of the rule or part of the rule is carried over. Nothing in this section requires the Legislature to use the legislative instrument produced pursuant to subsection 3 to approve or disapprove of a rule or part of a rule.

**Sec. C-4. 12 MRSA §8867-F,** as enacted by PL 2011, c. 599, §6, is amended to read:

## §8867-F. Fee schedule

The bureau shall establish a schedule of fees through rulemaking for the administration of sections 8867-D and 8867-E. Notwithstanding Title 5, section 8071, subsection 2, paragraph A, rules Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The bureau may not issue an approval, certificate, special exception or variance until the required fee has been paid.

- **Sec. C-5. 22 MRSA §2422-A, sub-§2,** ¶**A,** as enacted by PL 2021, c. 652, §1, is amended to read:
  - A. Notwithstanding Title 5, section 8072, subsection 11 or any other provision of law to the contrary, rules provisionally adopted by the department in accordance with this subsection and submitted for legislative review may not be finally adopted by the department unless legislation authorizing final adoption of those rules is enacted into law.
  - This paragraph is repealed on November 1, 2025.
- **Sec. C-6. 29-A MRSA §2382, sub-§5,** as amended by PL 2019, c. 335, §9, is further amended to read:
  - **5.** Long-term permits. The Secretary of State may grant permits for up to one year for trucks, truck tractors, semitrailers, heavy duty recovery vehicles and Class A special

mobile equipment. Notwithstanding Title 5, section 8071, subsection 2, paragraph A, the The Secretary of State, in consultation with the Commissioner of Transportation, shall establish the fee schedule by rule. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. C-7. 38 MRSA §490-NN, sub-§1, ¶B,** as amended by PL 2017, c. 142, §5, is further amended to read:

B. In addition to other powers granted to it, the department shall adopt rules to carry out its duties under this article, including, but not limited to, standards for exploration, advanced exploration, construction, operation, closure, post-closure monitoring, reclamation and remediation. Except as otherwise provided, rules adopted under this article are major substantive rules for purposes of Title 5, chapter 375, subchapter 2-A and are subject to section 341-H. Notwithstanding Title 5, section 8072, subsection 11, or any other provision of law to the contrary, rules provisionally adopted by the department in accordance with this article and submitted for legislative review may not be finally adopted by the department unless legislation authorizing final adoption of those rules is enacted into law.

17 SUMMARY

 This bill makes the following changes to the laws governing administrative procedures.

Part A requires courts and hearing officers to review an agency's interpretation of a statute, rule or subregulatory document without deference to the agency's interpretation. If the legal text is unclear after the court or hearing officer exhausts all customary interpretive tools, the court or hearing officer must default to a reasonable interpretation that limits agency power and maximizes individual liberty.

Part B provides that administrative rules expire on June 30th of the 5th year following the year of their filing unless extended by the Legislature. It also requires rules to be approved by the Governor before they can be finally adopted by an agency.

Part C changes the definitions of routine technical rules and major substantive rules. It also eliminates the provision allowing an agency to finally adopt major substantive rules that the Legislature failed to act on.